TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 435

HARRY LEV, PETITIONER,

vs.

UNITED STATES OF AMERICA.

No. 436

RAYMOND WOOL, PETITIONER,

vs.

UNITED STATES OF AMERICA.

No. 437

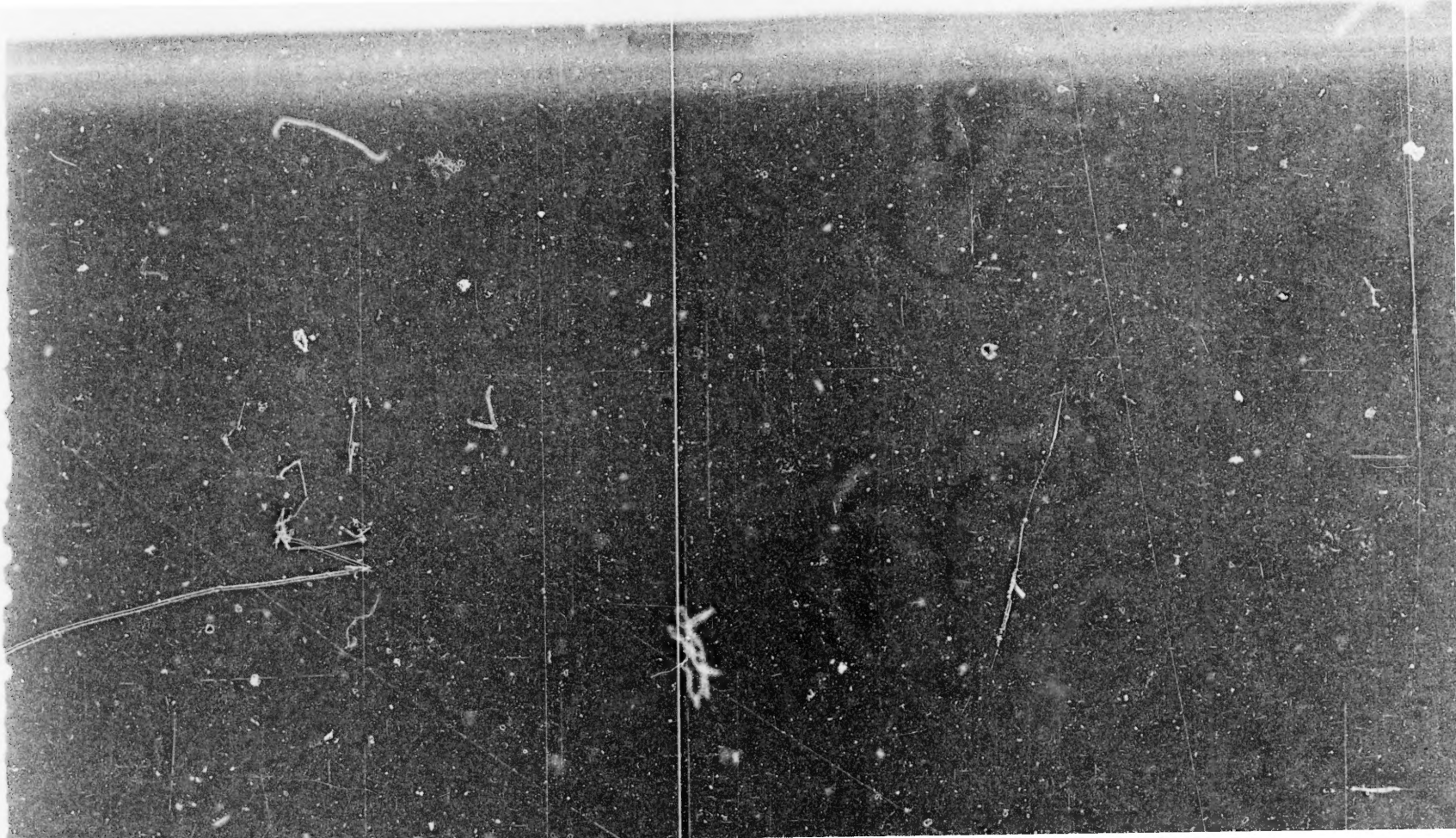
MARVIN RUBIN, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 10, 1958
CERTIORARI GRANTED DECEMBER 8, 1958



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IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Criminal Docket — Crim. No. C 149-324

TITLE OF CASE

THE UNITED STATES,

vs.

HARRY LEV	Ct 1
MARVIN RUBIN	Cts 1-2-3
MAURICE ADES	Ct 1
JOSEPH G. PORRECA	"
ERIC C. FARNELL	"
RAYMOND WOOL	"
MELLA HORT	"
DAVID POLLACK	"
GEORGE A. EARNSHAW.	"

VIOLATION

T 18, Secs. 371 and 201

Conspiracy to defraud the U S in the exercise of its governmental functions of administration and procurement of government contracts;

Offering of bribe with intent to influence decision of govt. official in N Y Quartermaster Procurement Agency.

Three counts.

DOCKET ENTRIES

DATE	DEFENDANT	FINED
5-15-57	Harry Lev	$5000.
"	Marvin Rubin	1000.
"	Maurice Ades	1500.
"	Raymond Wool	1500.
"	Mella Hort	1500.
5-17-57	Joseph G Porreca	3500.

DATE	NAME	AMT. REC'D	DISB.
5.16.57	Gallop C & G. for (Lev)	5—	5—
5.17.57	pd. U.S.TSy.	5—	5—
5.21.57	(H.Lev) J.L.Sullivan	5	
5.24.57	Pd U.S. Treas (atty)		5—
5.22.57	M. Ades (T.J.Rossi)	5—	5—
5.24.57	Pd.U.S.Tsy—		
5.23.57	A.H. Truman (R. Wool)	5—	5—
5.24.57	Pd. U.S. Tsy.		
6.6.57	(Pd. by prob. officer of N.Y. Mella Hort db)	125—	
6.7.57	Pd. U.S. Treas.		125—

DATE	CASH ACCT. DEFT.	REC'D	DISB.
7.19.57	M.Hort	125—	
7.23.57	pdUS.Tsy		125.—

DATE	PROCEEDINGS
3-22-56	Filed indictment. Ordered sealed. DAWSON, J.
4-16-56	Indictment ordered unsealed. NOONAN, J.
4-18-56	Filed notice of appearance by William M. Hort, 200 Hudson St. NYC as atty for Mella Hort.
4-19-56	Filed notice of appearance by Aranow, Brodsky, Bohlinger, Einhorn & Dann, 122 E 42nd St. NYC as Attys. for Joseph G. Porreca.
4-23-56	Filed notice of appearance by John T. Sullivan, 70 Pine St. NYC as atty for Marvin Rubin.
4-24-56	Filed notice of appearance by Harold Davis, 76 Beaver St. NY as atty for Maurice Ades.
4-26-56	Filed notice of appearance by John K. Carroll, 1 Wall St. NYC as atty for David Pollack.
[fol. 2]	
4-26-56	Filed notice of appearance by Parker, Chapin & Flattau, (Alvin K. Sylvester Esq.) 285 Madison Av. NYC as attys for Harry Lev.

DATE	PROCEEDINGS
4-26-56	Marvin Rubin pleads not guilty. Bail $1000. Maurice Ades pleads not guilty Bail 1000. Joseph G. Porreca pleads not guilty Bail $1000. Eric C. Farnell pleads not guilty. Released on own recognizance. Raymond Wool pleads not guilty. Bail $500. Mella Hort pleads not guilty. Released on own recognizance. David Pollack pleads not guilty. Released on own recognizance. Defts. ordered fingerprinted. Deft. paroled until 4 PM to give bail. Deft. to make motions returnable on or before 5-21-56. NOONAN, J.
4-26-56	Filed notice of appearance by Colonel Samuel Rowe, USA 12 E 41st St. NYC as atty for Major Eric C. Farnell.
4-26-56	Filed notice of appearance by Victor J. Herwitz, 156 Bway NYC as atty for Raymond Wool.
4-27-56	Filed affdt. consent and Order extending bail limits of deft. Maurice Ades. SUGARMAN, J.
4-30-56	Harry Lev pleads not guilty. Bail $1000. Paroled until 4 PM to give bail. Deft. ordered fingerprinted. Deft. to make motions returnable on or before 5-21-56. SUGARMAN, J.
4-30-56	Filed order extending bail limits of Harry Lev. SUGARMAN, J.
5- 1-56	Filed affdt. consent and order extending bail limits of Joseph Porreca. NOONAN, J.
5- 1-56	Filed affdt. consent and order extending bail limits of Raymond Wool. NOONAN, J.
5- 2-56	Lawrence Costiglio Esq. assigned as attorney to George A. Earnshaw. Deft. Earnshaw pleads not guilty. Released on own recognizance. Deft. ordered fingerprinted. Motion to be made returnable on or before 5-21-56. NOONAN, J.

DATE	PROCEEDINGS
5- 3-56	Filed notice of appearance by Lawrence N. Costiglio, 521 5th Av. NYC as atty for George A Earnshaw.
5- 8-56	Harold Davis relieved as attorney for Defendant Maurice Ades. Noonan J.
5-11-56	Filed notice of appearance by Thomas H. Casey, 45 John St. NYC as atty for Maurice Ades.
5-16-56	Filed substitution of Samuel W. Altman, 9 E 40th St. NYC as atty for deft. Harry Lev. So ordered. W V CONNELL, Clerk.
5-21-56	Filed substitution of Spar, Schlem & Burroughs, 160 Bway NYC as attys for deft. Mella Hort. So ordered. W V CONNELL, Clerk.
[fol. 3] 5-21-56	Filed affdt and notice of motion on behalf of deft. Major Eric C Farnell for a bill of particulars. (argued 5-28-56-Dec. Reserved)
5-21-56	Filed affdt and notice of motion on behalf of deft. Major Eric C. Farnell for an order severing the indictment and granting a separate trial. (argued on 5-28-56-decision reserved.
5-21-56	Filed affdt. and notice of motion on behalf of deft. Major Eric C. Farnell for an order to furnish deft. with copy of minutes of Grand Jury. (argued on 5-28-56-decision resrved)
5-23-56	Filed affdt. and notice of motion on behalf of deft. George A. Earnshaw for a severance and a separate trial. (argued on 5-28-56-Dec. Reserved)
5-23-56	Filed affdt. and notice of motion on behalf of deft. George A. Earnshaw for a bill of particulars. (argued on 5-28-56-Dec. reserved)
5-25-56	Filed affdt. and notice of motion for a Bill of Particulars on behalf of defendant Mella Hort, returnable 5-28-56.

DATE	PROCEEDINGS
5-28-56	Motions by deft. Eric C. Farnell for 1. separate trial; 2. Bill of Particulars and 3. to inspect G. J. minutes—Argued. Decision reserved. WEINFELD, J.
5-28-56	Motions by deft. George A. Earnshaw for severance and a separate trial and for Bill of Particulars. Argued. Dec. reserved. WEINFELD, J.
5-28-56	Motion by deft. Mella Hort for Bill of Particulars —Argued Decision reserved. WEINFELD, J.
5-29-56	Memo endorsed—Motion by deft. Farnell for separate trial—Motion denied. WEINFELD, J. (See memo endorsed)
5-29-56	Memo endorsed—Motion by deft. Farnell for bill of particulars. Motion granted only to the extent that Item 2 was granted in the application made by the deft. Earnshaw. In all other respects the motion is denied. WEINFELD, J. (See memo endorsed)
5-29-56	Memo endorsed—Motion by deft. Farnell to inspection Grand Jury Minutes. Motion denied. WEINFELD, J. (See memo endorsed)
5-29-56	Memo endorsed—Motion by deft. Hort for bill of particulars—Motion granted only to the extent that Item 2 was granted in the application made by the deft. Earnshaw. In all other respect the within motion is denied. WEINFELD, J. (See memo endorsed)
5-29-56	Filed govt's affdt in opposition to motion by deft. Hort for bill of particulars.
5-29-56	Memo endorsed—Motion by deft. Earnshaw for bill of particulars—Granted as to item 2. Enter order. WEINFELD, J. (See memo endorsed)
6-12-56	Filed notice of settlement and order that the U S serve and file a bill of particulars as to Defts. Farnell, Hort & Earnshow; it is fur-

DATE	PROCEEDINGS
	ther ordered that defts. may inspect any exhibit marked in evidence during the Senate Hearings on textile procurement in the military services, 84th Congress. 1st session, 1955. WEINFELD, J.
[fol. 4]	
6-19-56	Joseph G. Porreca pleads guilty to count one. Atty present. Sentence adjd to 9-4-56. Bail cont'd. McGOHEY, J.
6-21-56	Filed bills of particulars (3) as to Eric C. Farnell, Mella Hort & George A. Earnshaw.
9- 4-56	Filed stipulation of substitution of attys Galiop, Climenko & Gould 30 Broad St. NYC in place and stead of Samuel W. Altman, for Deft Harry Lev. So ordered 9-4-56 HERBERT A. CHARLSON, Clerk.
10- 2-56	Filed affidavit and notice of motion of Milton S. Gould, for Bill of particulars.
10- 2-56	Filed affidavit and notice of motion of Harry Lev, for and Order dismissing indictment, Granting a seperate trial, and inspection of Grand Jury minutes.
10-10-56	Filed Transcript of record of proceedings, dated 5/2/56
10-16-56	Motion by deft Harry Lev to dismiss indictment, etc.,—argued. Decision reserved
10-16-56	Motion for a bill of particulars.—submitted. Decision reserved.
10-30-56	Filed affdt. of George S. Leisure Jr. dated 10-10-56.
10-30-56	Filed memorandum #23001 by BRYAN, J. Motion to dismiss indictment and for a severance as to Deft. Lev is denied. Motion for particulars as to items 9 and 10 are granted and all other items are denied.

DATE	PROCEEDINGS
11-13-56	Filed notice of settlement and order by the Government dated 11-9-56. ordering that the Government with. ten days of entry of this order serve deft Harry Lev with a bill of particulars and granting the deft Harry Lev to inspect any exhibit marked in evidence during the Senate Hearings on Textile Procurement in the Military Services, 84th Congress, 1st Session, 1955. BRYAN, J.
11-13-56	Filed notice of settlement and order by the deft. Harry Lev. (Counter Order--unsigned).
11-16-56	Filed Government's Bill of Particulars as to deft. Harry Lev.
12-13-56	Filed Transcript of record of proceedings, dated 6/19/56
1-30-57	Victor Herwitz Esq. allowed to withdraw as Attorney for deft. Raymond Wooi. SUGARMAN, J.
2- 8-57	Filed affidavit of Fioravante G. Perrotta, Assist U.S. Atty dated 2-6-57 and order authorizing the U.S. Atty to employ a physician to conduct a physical examination as to the condition of Louis I. Alperstein, Ilona Hotel Apartments, 1210 N.E. 110th St. Miami, Florida to determine whether or not said Louis I. Alperstein is physically able to attend and give evidence in this case. WALSH, J.
2-13-57	Thomas H. Casey Esq, allowed to withdraw as Attorney for Deft. Maurice Ades, NOONAN, J.
2-14-57	Filed notice of appearance of Atty Albert H. Treiman, 261 Broadway, NYC for Raymond Wool.
[fol. 5] 2-28-57	Filed affidavit and order authorizing Dr. Wm. Hitzig, 787 Park Ave., NYC to conduct an examination of Leon M. Levy at Coney Island City Hospital, Brooklyn, NY for the purpose of enabling the Court to determine whether or not the said Leon M. Levy is physically able to attend and give evidence in this case. dated 2-27-57. KAUFMAN, J.

DATE	PROCEEDINGS
2-15-57	Filed bond dated 4-26-56 in the sum of $500 for Raymond Wool. Citizens Casualty Co. (Surety)
2-15-57	Filed bond dated 4-26-56 in the sum of $1,000. for Maurice Ades. Citizens Casualty Co. (Surety)
2-15-57	Filed bond dated 4-26-56 in the sum of $1,000 for Harry Lev. National Surety Corp. (Surety)
2-15-57	Filed bonds (2) in the sum of $1,000 each for Marvin Rubin and Joseph G. Porreca dated 4-26-56. Public Service Mutual Ins. Co. (Surety)
3- 8-57	Filed order and affidavit authorizing Dr. Philip Goldstein, 3100 Ocean Pkway, Brooklyn, NY to conduct an examination as to the physical condition of Leon M. Levy at Coney Island City Hospital, Brooklyn, NY for the purpose of enabling the Court to determine whether or not said Leon M. Levy is Physically able to attend and give evidence in this case etc. KAUFMAN, J.
3-13-57	Filed notice of appearance of Atty John J. Donovan, 1 Wall St., NYC as co-counsel for David Pollack.
3-20-57	Filed notice of appearance of Atty. Lucian J. Rossi, 23 E. 26th St., NYC for deft. Maurice Ades.
3-21-57	Filed affidavit and order authorizing Dr. Archie McCallister, 8340 E. Second Ave., Miami, Florida to conduct an examination as to the physical condition of Louis Alperstein, for the purpose of enabling the Court to determine whether or not he is physically able to attend and give evidence in this case, further ordered that the U.S. Atty is authorized to pay a reasonable fee to Dr. Archie McCallister for said examination. KAUFMAN, J.
3-22-57	Filed Transcript of record of proceedings, dated 3-19-54
3-20-57	Before I R KAUFMAN, J. Trial begun as to Defts. Lev, Rubin, Ades, Wool, Hort and Pollack.

DATE	PROCEEDINGS
	Severed as to defts. Farnell and Earnshaw. Trial continued on March 21, 22, 25, 26, 27, 28, 29, April 1, 2, 3, 1957.
4- 4-57	Trial cont'd.
4- 5-57	Trial cont'd,—Defts. motions to dismiss—Denied
4- 8-57	Trial cont'd.
4- 9-57	Trial cont'd.
4-10-57	Trial cont'd.
4-11-57	Trial cont'd.
4-12-57	Trial cont'd.
4-15-57	Trial cont'd.
4-17-57	Trial cont'd.
[fol. 6]	
4-18-57	Trial cont'd.
4-19-57	Trial cont'd.
4-22-57	Trial cont'd.—All defts rests. Gov't rests.
4-23-57	Trial cont'd.—Summations
4-24-57	Trial cont'd.—Summations continued.
4-25-57	Trial cont'd—Charge by the Court. Jury retires to deliberate.
4-26-57	Trial cont'd. and concluded. Jury returns the following Verdict. Harry Lev.—"Guilty on Count 1. Marvin Rubin "Guilty on counts 1 and 3. "Not Guilty" on count 2. Maurice Ades—"Guilty" on Count 1. Raymond Wool—"Guilty on Count 1. Mella Hort—"Guilty" on Count 1. David Pollack —"Not Guilty". Jury recommends leniency for all defendants. All defendant's motions made and renewed.—Denied. Pre-Sentence reports ordered by 5-15-57 at 10:30 A.M. Bail continued for all defendants. Mella Hort released on own recognizance. I. R. KAUFMAN, J.

DATE	PROCEEDINGS
5-15-57	Filed Judgment #61,609 Harry Lev—Ct 1—Nine Months at a place of confinement to be designated by the Atty Genl and fined $5000. and to stand committed until fine is paid or he is otherwise discharged according to law. Bail continued pending appeal. I. R. KAUFMAN, J.
5-15-57	Filed Judgment #61,608 Marvin Rubin—Fifteen Months on each of counts 1 and 3 to run concurrently with each other at a place of confinement to be designated by the Atty Genl. and fined $1000. on count one. Deft. to stand committed until fine is paid or he is otherwise discharged according to law. Deft. shall surrender to U S marshal for service of sentence on May 29, 1957. Bail cont'd. I R KAUFMAN, J.
5-15-57	Filed Judgment #61,605 Raymond Wool—Ct 1—Eighteen Months at a place of confinement to be designated by the Atty Genl. and fined $1500. and to stand committed until fine is paid or he is otherwise discharged according to law. Bail continued pending appeal. I R KAUFMAN, J.
5-15-57	Filed Judgment #61,607 Maurice Ades—Imposition of sentence suspended on count 1. Probation for two years, subject to the standing probation order of this Court and fined $1500. Fine to be paid within one year or defendant to be committed until fine is paid or otherwise discharged according to law. I R KAUFMAN, J.
5-15-57	Filed Judgment #61,606 Mella Hort—Imposition of sentence suspended on count 1. Probation for two years, subject to the standing probation order of this Court and fined $1500. Fine to be paid within one year or defendant to be committed until fine is paid or otherwise discharged according to law. I R KAUFMAN, J.
5-15-57	Issued commitments and copies as to defts. Lev, Rubin and Wool.
5-16-57	Filed Notice of appeal by Deft. Harry Lev. $5.00

DATE	PROCEEDINGS
5-17-57	Filed Judgment #61,616 Joseph G. Porreca—Imposition of prison sentence suspended. Probation for two years, subject to the standing probation order of this Court. Fined $3500. to be paid in one year or to be committed until fine is paid or he is otherwise discharged according to law. I R KAUFMAN, J.
[fol. 7]	
5-21-57	Filed notice of appeal by deft. Marvin Rubin. $5.00
5-22-57	Filed notice of appeal by deft. Maurice Ades. $5.00
5-23-57	Filed notice of appeal by deft. Raymond Wool. $5.00
5-24-57	Filed order admitting deft. Marvin L. Rubin to bail pending appeal in the sum of $2,500. and in event that his appeal is not promptly prosecuted, or that the proceedings are not docketed in 30 days, the Government may move to revoke bail.
5-29-57	Filed Bond pending appeal dated 5-29-57 for Harry Lev, in the sum of $1,000. National Surety Corporation. (Surety).
5-29-57	Filed Bond pending appeal dated 5-29-57 for Marvin Rubin in the sum of $2,500. Public Service Mutual Insurance Company. (Surety).
6- 5-57	Filed Bond pending appeal dated 6-5-57 for Raymond Wool in the sum of $500. Public Service Mutual Insurance Company. (Surety).
6-27-57	Filed Transcript of record (2) of proceedings, dated 5/17/57
8-22-57	Filed Transcripts of record of proceedings 3 Vol., dated March 20, 21, 25, 26, 27, 28, 29-1957—April 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 17, 18, 19, 22, 24, 25, 26,-1957 & May 15, 1957.

	NAME	RECEIVED	DISBURSED
8-22-57	M. Hort	125.00	
8-23-57	Pd. U. S. Treas.		125.00

[fol. 8]

In United States District Court
Southern District of New York

C-149-324

United States of America,

—v—

Harry Lev, Marvin Rubin, Maurice Ades, Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack and George A. Earnshaw, Defendants.

Indictment—Filed March 22, 1956

The Grand Jury charges:

1. From on or about January 1, 1951, and continuing up to and including the date of filing of this indictment in the Southern District of New York, Harry Lev, Marvin Rubin, Maurice Ades, Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack and George A. Earnshaw, the defendants, did unlawfully, wilfully and knowing combined, conspire, confederate and agree together, and with each other and with divers other persons to the Grand Jurors unknown, to defraud the United States in the exercise of its governmental functions of administration and procurement of government contracts free from unlawful impairment, obstruction, partiality, improper influence, dishonesty, fraud and corruption, and in its right and interest in the conscientious, honest and faithful services, judgements, determinations and actions of the defendants Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack and George A. Earnshaw, and duly appointed employees of agencies of the United States, to wit, the New York Quartermaster Procurement Agency (hereinafter referred to as the NYQMPA), and the Armed Services Textile and Apparel Procurement Agency (hereinafter referred to as the ASTAPA), free from corruption, partiality, improper influence, dishonesty, bias, hope of unlawful reward and fraud.

2. During the course of the conspiracy defendant Joseph G. Porreca was a Clothing Inspector and Chief Inspector of the Textile Fabrication Branch of the NYQMPA.

[fol. 9] 3. During the course of the conspiracy defendant Eric C. Farnell was a Contracting Officer in the NYQMPA, and Chief of the Clothing Purchasing Branch of the ASTAPA.

4. During the course of the conspiracy defendant Raymond Wool was Chief of the Headwear, Knitwear, Rainwear Section, Clothing Purchasing Branch, Purchasing Division of the ASTAPA.

5. During the course of the conspiracy defendant Mella Hort was a Procurement Clerk in the NYQMPA, and a Contract Administration Clerk in the ASTAPA.

6. During the course of the conspiracy defendant David Pollack was a Business Accountant in the NYQMPA and in the ASTAPA.

7. During the course of the conspiracy defendant George A. Earnshaw was a Purchasing Agent for the NYQMPA and the ASTAPA.

8. It was part of the conspiracy that the defendants Harry Lev, Marvin Rubin and Maurice Ades would offer to give and give money and other things of value to officers, employees and persons acting for and on behalf of the NYQMPA and the ASTAPA, for the purpose of inducing them to corruptly disclose confidential information prior to the awarding of government contracts, which information would enable said defendants to be low bidders on such contracts.

9. It was further a part of the conspiracy that the defendants Harry Lev, Marvin Rubin and Maurice Ades would offer to give and give money and other things of value to officers, employees and persons acting for and on behalf of the NYQMPA and the ASTAPA for the purpose of inducing them to corruptly grant deviations in the specifications of government contracts, which deviations might result in loss of moneys to the United States.

10. It was further a part of the conspiracy that the defendants would offer to give and give money and other things of value to clothing inspectors employed by the NYQMPA for the purpose of influencing their decisions and actions on matters pending before the said clothing inspectors in their official capacities as inspectors of clothing and apparel for the United States Army, Navy and Air Force.

11. It was further a part of the conspiracy that defen- [fol. 10] dants Joseph G. Porreca, Eric C. Farnell, Raymond Wool, Mella Hort, David Pollack, George A. Earnshaw, and other co-conspirators to the Grand Jurors unknown, in their capacities as officers, employees and persons acting for and on behalf of the NYQMPA and the ASTAPA would corruptly accept moneys, gratuities and other things of value with intent to have their decisions and actions influenced thereby on matters and contracts pending before them in their official capacities within the said agencies of the United States.

12. It was further a part of the conspiracy that the defendants and other co-conspirators to the Grand Jurors unknown, would at all times misrepresent, conceal and hide and cause to be misrepresented, concealed and hidden, the purposes of, and the acts done in furtherance of said conspiracy.

Overt Acts

The Grand Jury further charges that the defendants and co-conspirators to the Grand Jurors unknown, in furtherance of and for the purpose of carrying into execution said combination, conspiracy, confederation and agreement, did and performed the following and other overt acts, to wit:

1. In or about March 1952, in the Southern District of New York, defendant Marvin Rubin stated and represented to Leon Levy and defendant Maurice Ades that he had connections and influence with officers, employees and persons acting for and on behalf of the NYQMPA, and that he could obtain for the said Leon Levy and Maurice Ades,

special advantages and preferential treatment in the awarding and administration of government contracts.

2. In or about May 1952, in Chicago Illinois, defendant Harry Lev offered to pay $50 a week to Michael Weintraub when the said Michael Weintraub was then and there acting as an Inspector for and on behalf of the NYQMPA.

3. On or about June 13, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant Eric C. Farnell the sum of $1,000 in United States currency.

4. On or about August 27, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant David Pollack the sum of $500 in United States currency.

[fol. 11] 5. On or about December 24, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant Joseph G. Porreca a nine cubic foot deep freeze unit.

6. On or about October 14, 1952, in the Southern District of New York, defendants Marvin Rubin and Joseph G. Porreca caused Inspector William Ienni to be transferred to Mayaguez, Puerto Rico.

7. On or about December 22, 1952, in the Southern District of New York, defendant Marvin Rubin delivered and caused to be delivered to defendant George A. Earnshaw a quantity of whiskey of the approximate value of $17.55.

8. On or about May 12, 1953, in San Juan, Puerto Rico, defendants Harry Lev, Marvin Rubin and Maurice Ades held a meeting with Inspector Louis I. Alperstein.

9. On or about June 11, 1953, in the Southern District of New York, the defendant Marvin Rubin caused a check for $285 to be delivered to William D. Franklin in payment of medical expenses incurred by defendant Raymond Wool.

10. On or about August 12, 1953, in the Southern District of New York, defendant Marvin Rubin delivered and caused

to be delivered to Jerome Schlessinger, a plane ticket to Puerto Rico and the sum of $50 in United States currency.

(Title 18, United States Code, Section 371).

Second Count

The Grand Jury further charges:

On or about August 27, 1952, in the Southern District of New York, Marvin Rubin, defendant herein, promised, offered to give and gave the sum of $500 in United States currency to David Pollack, the said David Pollack being then and there an employee of and a person acting for and on behalf of an agency of the United States, to wit, the New York Quartermaster Procurement Agency, with intent to influence the decisions and actions of the said David Pollack on matters at that time pending, and which might by law be brought before him in his official capacity as a Business Accountant in the New York Quartermaster Procurement Agency.

(Title 18, United States Code, Section 201).

[fol. 12] Third Count

The Grand Jury further charges:

On or about December 24, 1952, in the Southern District of New York, Marvin Rubin, defendant herein, promised, offered to give and gave a nine cubic foot deep freeze unit to Joseph G. Porreca, the said Joseph G. Porreca being then and there an employee of and a person acting for and on behalf of an agency of the United States, to wit, the New York Quartermaster Procurement Agency, with intent to influence the decisions and actions of the said Joseph G. Porreca on matters at that time pending and which might by law be brought before him in his official capacity as a Clothing Inspector in the New York Quartermaster Procurement Agency.

(Title 18, United States Code, Section 201).

/s/ Paul W. Williams, United States Attorney.

/s/ Peyton K. Royal, Foreman.

SENTENCE

5-15-57 Raymond Wool—18 months on ct 1 and fined $1500—Bail contd pending appeal. Committed fine

5-15-57 Mella Hort—Imposition of prison sentence suspended. Probation for 2 years. Fined $1500 Committed fine I R Kaufman J

5-17-57 Joseph G. Porreca Imposition of prison sentence suspended. Probation for 2 years Fined $3500 to be paid in 1 year. Committed fine. I R Kaufman J

[fol. 13]

5- 2-56 George A. Earnshaw Deft. Ordered fingerprinted. Released on own recognizance Motion to be made returnable on or before 5/21/56 Noonan J

6-19-56 Joseph G. Porreca Pleads guilty, Attorney present. (Count one) Sentence adjourned until. 9/4/56. Bail continued. McGohey J

1-30-57 Victor Herwitz Esq allowed to withdraw as attorney for defendant Raymond Wool. Sugarman J

2-13-57 Thomas H. Casey, Esq. allowed to withdraw as attorney for defendant Maurice Ades. Noonan J.

3-20-57 Trial begun before Hon I R Kaufman J Jury duly empanelled & sworn—Govt motion to sever as to Defts Farnell & Earnshaw. Granted. Trial begun as to Defts: Lev, Rubin, Ades Wool Hort & Pollack.

3-21-57 Trial cont'd

3-22-57 Trial cont'd

3-25-57 Trial cont'd

3-26-57 Trial cont'd

3-27-57 Trial cont'd

3-28-57 Trial cont'd

SENTENCE

3-29-57 Trial cont'd

4- 1-57 Trial cont'd

4- 2-57 Trial cont'd

4- 3-57 Trial cont'd

4- 4-57 Trial cont'd

4- 5-57 Trial contd. Govt rests—Defts motions to dismiss Denied.

4- 8-57 Trial cont'd

4- 9-57 Trial contd.

4-10-57 Trial contd.

4-11-57 Trial contd.

4-12-57 Trial contd Deft Rubin rests

4-15-57 Trial contd & adjnd to 4/17/57

4-17-57 Trial contd. Deft Lev rests

4-18-57 Trial contd. Deft Lev rests, Ades rests. Wool rests.

4-19-57 Trial contd

4-22-57 Trial contd. Deft Hort rests, Deft Pollack rests, —all Defts rests. Both sides rest.

4-23-57 Trial contd Summations by Defts Pollack, Hort, Wool, Ades & Lev.

4-24-57 Trial contd. Summation by Deft Rubin and Govts summations, all defts motion for mistrial—denied.

[fol. 14]

4-25-57 Trial contd. Charge by the Court. Marshals sworn—Jury out to deliberate at 2:15 P.M. Jury sent to Hotel at 12:00 A.M. to resume deliberation at 10:00 A M—4/26/57.

4-26-57 Trial contd. Jury deliberating at 10:00 A.M. Jury returns at 2:00 P.M. with verdict—
Deft Harry Lev guilty on ct 1.

SENTENCE

Deft Marvin Rubin guilty on ct 1 and ct 3 Not guilty on ct 2.
Deft Maurice Ades guilty on ct 1
Deft Raymond Wool guilty on ct 1
Deft Mella Hort guilty on ct 1.
Deft David Pollack not guilty.
With recommendation of leniency for all defts.
All defts motions made & renewed—Denied.
Pre Sentence reports ordered by May 15 at 10:30 A.M. Bail contd for all uefts O.R. for Mella Hort. I R Kaufman J

5-15-57 Harry Lev—9 months on ct 1 & fined $5000 Bail contd pending appeal. Committed fines.

5-15-57 Marvin Rubin—15 months on ct 1—Fined $1000 15 months on ct 3—to run concurrently with ct 1. Deft Rubin to surrender on May 29, 1957—at 10:30 A.M. in Room 318—Bail contd. Committed fine

5-15-57 Maurice Ades—Imposition of prison sentence suspended—2 years probation Fined $1500 Committed fine. 1 yr to pay fine

[fol. 15]

4-16-56 Indictment ordered unsealed. Noonan J.

4-26-56 Marvin Rubin Pleads not guilty—Bail $1000.
Maurice Ades Pleads not guilty—Bail $1000.
Joseph G. Porreca Pleads not guilty—Bail $1000.
Eric C. Farnell Pleads not guilty—Released on own recognizance
Raymond Wool Pleads not guilty—Bail $500.
Mella Hort Pleads not guilty—Released on own recognizance
David Pollack Pleads not guilty—Released on own recognizance
Defts. Ordered fingerprinted
Defts. Paroled until 4 P.M. to give bail
Defts. to make motions returnable on or before 5/21/56. Noonan, J.

SENTENCE

4-30-56 Harry Lev Pleads not guilty—Bail $1000.
Paroled until 4 P.M. to give bail
Deft. Ordered fingerprinted
Deft. to make motions returnable on or before 5/21/56. Sugarman, J.

5- 2-56 Lawrence Costiglio, Esq. assigned as attorney to George A. Earnshaw Pleads not guilty.

C 149-324

U. S.....Court

THE UNITED STATES OF AMERICA,

vs.

HARRY LEV, MARVIN RUBIN, MAURICE ADES, JOSEPH G. PORRECA, ERIC C. FARNELL, RAYMOND WOOL, MELLA HORT, DAVID POLLACK and GEORGE A. EARNSHAW, Defendants.

Indictment

Conspired, confederated and agreed together to defraud the U.S. by influence, dishonesty and corruption of government employees in violation of Title 18, U.S.C., Sections 201 and 371.

Paul W. Williams, United States Attorney.

A True Bill

/s/ Peyton K. Royal, Foreman.

[fol. 296]

Transcript of Testimony

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mr. Christy: The Government calls Melvin Carlin.

MELVIN CARLIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Christy:

Q. Mr. Carlin, where do you live?
A. 11 Downer Avenue, Scarsdale, New York.
Q. What is your occupation, sir?
A. I am a certified public accountant.
Q. Are you licensed in the State of New York?
[fol. 297] A. Yes.
Q. How long have you been so licensed?
A. 20 years.
Q. Do you have an office in New York, Mr. Carlin?
A. Yes.
Q. Where is that located?
A. 261 Madison Avenue.
Q. Are you presently self-employed?
A. Yes.
Q. Mr. Carlin, at any time did you perform accounting services for a company known as Bonita Originals?
A. Yes.
Q. Do you recall when you commenced working for Bonita?
A. Yes. Early in 1952.
Q. And what was Bonita? Was it a corporation, a company? Will you tell us what it was.
A. It was a corporation.
Q. Do you know who the officers were?
A. I knew them to be Maurice Ades and Leon Levy.

Q. Do you see the defendant Ades in the courtroom?
A. Yes.
[fol. 298] Q. Will you point him out, please.
A. Right there (indicating).

Mr. Christy: May the record indicate the witness has identified the defendant Ades?
The Court: Yes.

Q. Do you recall the offices that each of these men held?

Mr. Gould: If your Honor please, may I suggest that before we go any further with this line we ought to get a time.
The Court: All right.
Mr. Christy: I believe the witness stated that he started work in 1952.
The Court: No. You asked him what offices they held. They may have held different offices.

Q. At the time, Mr. Carlin, that you started work, do you recall the offices which each man held?
A. As before, they, Ades and Levy were the officers at the time I became associated with the firm.
Q. Were there any other officers?
A. None that I knew of.
[fol. 299] Q. Do you recall which office each of these men held?
A. I do not recall that.
Q. Do you recall where the offices were?
A. Yes. On 34th Street, 33 West 34th Street.
Q. Would you tell us, Mr. Carlin, how you came to be accountant for Bonita?
A. I was recommended to them by an engineering firm known as Capelin Associates.
Q. And what kind of a firm was that?
A. They were industrial engineers, were and are.
Q. At the time you became accountant for Bonita, what line of business was Bonita in?
A. They were manufacturing children's dresses.
[fol. 300] Q. Where were these dresses manufactured?
A. They were manufactured in Puerto Rico.

Q. Do you recall the name of the company?
A. Yes. That was the Maurice Embroidery Works.
Q. Where in Puerto Rico was that?
A. The town or City of Mayaguez.
Q. What was the relationship between Maurice Embroidery Works and Bonita?
A. They were affiliated companies.
Q. Do you know how the stock was held in Maurice Embroidery Works? Do you recall?
A. The companies were owned equally by Ades and Levy.
Q. When you say "the companies," you are referring to?
A. Maurice Embroidery Works and Bonita Originals.
Q. Mr. Carlin, at the time you began you accounting services for Bonita, what was the financial position of Bonita?
A. It was very precarious.
Q. Had they lost money?
A. Yes.
[fol. 301] Q. Were they behind in some of their payments?
A. Behind in most of their payments.
Q. After you became accountant did you have any conversations with anybody about improving the financial condition?
A. Yes. That was one of the first things we discussed when I began working with the firm.
Q. And with whom did you discuss them?
A. With Ades and Levy.
Q. And generally, what did you say?

Mr. Gould: May the record show, your Honor, that I have a continuing objection to this line, so that I don't interrupt, as not binding on the defendant Levy.

The Court: All right.

Mr. Sullivan: If the Court please, I object to conversations between Levy and Ades as not binding upon the defendant Rubin.

Mr. Treiman: Same objection on behalf of the defendant Wool.

Mr. Spar: Same objection on behalf of the defendant Mella Hort.

Mr. Carroll: Objection on behalf of the defendant Pollack.

[fol. 302] The Court: The objection is overruled and the testimony is taken subject to connection.

Mr. Christy: Will you read the last question, Mr. Reporter, please?

(Question read.)

A. May I go a little beyond that?

Mr. Sullivan: If the Court please, I object to the question "generally, what did they discuss." I would like to have the time of that conversation more specific.

The Court: Fix the time. What do you mean by "generally"?

Mr. Christy: Your Honor, the witness has just testified that shortly after he came in he had conversations with Mr. Ades and Mr. Levy about improving their financial condition.

The Court: In 1952?

Mr. Christy: In 1952.

The Court: Approximately when in '52?

The Witness: Early, March 1st.

The Court: All right, proceed.

By Mr. Christy:

Q. Now, would you tell us generally what those conversations were?

[fol. 303] A. Well, they were perhaps normal as an accountant would be engaged to work in a firm. We looked at their financial condition, and as I said, it was precarious, and I discussed with them methods of improving it; of simpler things, such as improving sales and liquidating inventories and causing the business to become profitable, as much as we could intelligently control it.

Q. Mr. Carlin, you said that you started work in early '52; when did you cease working for Bonita?

A. About July 15th of the same year.

Q. Did you start work at Bonita again after July 15th?

A. Yes.

Q. Approximately when was that?

A. About three months later; early October, about October 1st.

Q. And for how long did you work at that time?
A. About six weeks.
Q. Mr. Carlin, do you know a man named Marvin Rubin?
A. Yes.
Q. Do you see him in the courtroom?
[fol. 304] A. Yes.
Q. Would you point him out, please?
A. Second from the right there.

Mr. Christy: May the record indicate the witness has identified the defendant, your Honor?
The Court: Very well.

Q. Directing your attention to the early part of 1952 when you became the accountant, did you have occasion to see Marvin Rubin about this time?
A. At this time, no.
Q. After you had become the accountant did you have occasion to see him?
A. Yes.
Q. Had you met Marvin Rubin before?
A. Yes.
Q. Going back again to the time when you met Rubin in 1952, after you had become the accountant, will you tell us the circumstances under which you met him?
A. A former associate of mine, for whom I had worked – with whom I had worked—a fellow by the name of Richard Herson, called me. He had learned that I was working as the accountant for a firm who had a plant in Puerto Rico and he told me that Rubin, with whom he was quite [fol. 305] friendly, was looking for someone, was looking for a plant in Puerto Rico.
Q. Following that did you meet Rubin?
A. Yes.
Q. Where did you meet him?
A. The office of Bonita.
Q. Do you recall approximately when that was?
A. That was, I'd say, April, May of '52.
Q. Will you tell us who was present at this meeting?
A. Ades, Levy, Rubin and myself.
Q. And what did Rubin say, as best you can recall?

Mr. Spar: If your Honor pleases, on behalf of the defendant Hort may I object to the entire line of questioning, on the ground that it is not binding upon the defendant Hort, and if it is accepted, that it be accepted only subject to connection.

The Court: Is not binding on the defendant Hort?

Mr. Spar: Hort.

The Court: Well, I have made my ruling. It is a similar type of ruling. Your objection will be considered as having [fol. 306] been taken to this line of testimony.

Mr. Spar: Entire line. Thank you.

The Court: (Continuing) Upon the ground, as I understand it, that it antecedes the time when your client is first mentioned in connection with this alleged charge.

Mr. Spar: That's right, sir.

The Court: That is the purpose of your objection. Your objection is overruled and the testimony is taken subject to connection.

Q. Mr. Carlin, will you tell us what Mr. Rubin said at this meeting, as best you can recall?

A. He said that he could obtain Government work and wanted to know whether we were willing to take Government work and generally the basis upon which Rubin could become interested in the firm.

Q. Did you discuss the factory in Puerto Rico?

A. Yes.

Q. Will you tell us, sir, what Rubin said about the Government work?

A. He said that he could obtain Government work.

[fol. 307] Q. Did he say how?

A. He said he knew people at the Quartermaster Corps who would assist him in getting work.

Q. When he referred to the Quartermaster Corps, did you know what that meant?

A. I presume it was the procurement agency on 16th Street.

Q. Did he mention 16th Street?

A. Yes, the—yes.

Q. Was there also some discussion about the profits on this Government work?

A. Yes.

Q. What was said, as best you can recall?

A. Rubin wanted half the profits that might be derived from Government contracts.

Q. That Bonita would handle?

A. Yes.

Q. Was any agreement reached on this subject at this meeting?

A. No final agreement was made at this time.

Q. After this meeting did you talk to Levy and Ades?

A. Yes.

Q. What was said at that time?

[fol. 308] A. Well, we discussed Marvin Rubin's offer and we generally agreed to accept it, and we were going to try to get him to accept a third of the profits rather than a half.

Q. Mr. Carlin, after this first meeting and prior to the time that any awards were made to Bonita, did you have subsequent meetings with Rubin?

A. Yes.

Q. Do you recall approximately how many there were?

A. I'd say about a half a dozen.

Q. Who was present at these meetings?

A. Ades, Levy, Rubin and myself.

Q. Where did these meetings take place?

A. At the office of Bonita.

Q. Following—

The Court: Where was that located, that office?

The Witness: 33 West 34th Street.

Mr. Christy: 33 West 34th Street, your Honor.

The Court: Go ahead.

Q. After this first meeting with Rubin and Levy, did [fol. 309] you have another meeting?

A. Yes. I said half a dozen.

Q. All right. Now, at any of these meetings was there discussion about the division of the profits?

A. Yes.

Q. What was said, as best you recall?

A. Rubin agreed to take this third, third of the profits against his original proposal of asking for a half.

Q. At these subsequent meetings was there further discussion about the Government contracts?

A. Yes.

Q. What did Rubin say about the Government contracts?

A. Well, we were considering various garments to be obtained.

Q. What did he say with relation to obtaining the garment contracts?

A. He assured us that he could obtain them.

Q. Did he say how?

A. Not in detail; just assured us that he could obtain them.

The Court: How? What did he say?

The Witness: He said because of his connections down [fol. 310] there he felt that the people down there would assure him—would see that he got the contracts.

Q. At any of these meetings was there some discussion about how the contracts were to be handled by Bonita?

A. That Marvin Rubin would handle them completely after we had agreed on a minimum price. The rest was entirely up to him.

Q. Well, what do you mean "he would handle them completely"? What did he say about it?

A. Basically, he would have final say as to the price that Bonita was prepared to take the contract for, over this minimum, as I say, and he would make all arrangements, negotiations would be—take care of every detail.

By the Court:

Q. Let me see if I understand you. You mean Bonita would give a minimum price that they must have to complete the work?

A. That's right.

Q. From that point on Rubin would take over and negotiate a price.

A. A price.

[fol. 311] Q. Which in no event would be less than that fixed by Bonita, but might be more.

A. That's right.

Mr. Gould: If your Honor please, may I call attention to the fact that your Honor used the word "negotiate," and I respectfully suggest that all the contracts that are under discussion here are contracts which were let out for public bidding.

The Court: All right, eliminate the word "negotiate." He would fix the price.

Mr. Sullivan: If the Court please, Mr. Rubin couldn't fix the price. The price was fixed in the bid and the bid was a low price bid.

The Court: I know all about it. He would fix the price for which Bonita would submit the bid. I think it was clear. I think everybody understood it.

By Mr. Christy:

Q. Was there some discussion at these meetings about samples?

A. Yes, you had to have a sample to know what you were bidding on.

Q. And what was done about these samples? What did Rubin do about it?

[fol. 311-a] A. He would obtain them or direct us to obtain a sample, and the sample was submitted to this engineering firm of Capelin Associates.

The Court: Who?

The Witness: Capelin Associates.

The Court: Spell that.

The Witness: C-a-p-e-l-i-n Associates.

[fol. 312] Q. That was the industrial engineering firm you referred to a minute ago?

A. Yes. The sample would be submitted to them and they would analyze all garments to see how much it would cost to make up, as near as it could be predetermined, and a price was then put on it, because actually Bonita, never having made the garment, had to go to some expert to know whether they could make it at a price.

Q. Then did Bonita reject certain samples?

A. Yes, there were several samples, garments, rejected

through Capelin who advised us that it couldn't be made profitably in the plant in Mayaguez.

Q. At any of these meetings which you have referred to, Mr. Carlin, was there any discussion about expenses?

A. Mr. Rubin indicated that he would incur expenses in obtaining the Government work.

Q. Did he say what these expenses were for?

A. Yes. He said they were to return favors that might be extended to him at 16th Street.

Q. Did he say anything else about it?

A. I do not know what you mean.

Q. Is that all he said, to return favors?

[fol. 313] A. I think so.

Q. Was there any discussion about what it would cost or what these expenses would amount to?

A. There were discussions about that, and Rubin assured us that they would not get out of hand, he would exercise some control over them, and that was basically the thought because it couldn't be fixed exactly, we wanted to be sure that we were not getting into a thing that we couldn't afford.

Q. Was any figure mentioned?

A. There were figures mentioned, I recall, because as a representative of management I personally translated them into terms of a salesman's commission, and there were some—the thought that came through to our mind, the expenses might run about 5 per cent of the contract price.

Q. At this meeting at which the expenses were discussed, who was present?

A. Ades, Levy, Rubin and myself.

Q. During the course of these conversations did Rubin ever mention any names?

A. You mean names of people that he might know down in 16th Street?

Q. Yes.

A. I recall the names, two names particularly, there [fol. 314] might have been others, two names I do remember, Major Farnell and Mella Hort.

Q. In what reference did he use these names?

A. That he knew them from 16th Street.

Q. Did he say anything else about them?

A. Generally that he knew them well.

Q. Did he say that they—

Mr. Spar: Excuse me.

Your Honor, would you ask the witness to fix the date of that conversation?

The Court: Can you fix the date, as best you can, of that conversation?

The Witness: There were many conversations and they took place prior to the letting of the contract and subsequent to my introducing Rubin to the firm which has a relatively short span of time altogether; these half dozen conversations took place over approximately a 60-day interval.

The Court: Well, that is right. When did these 60 days begin and when did you say they ended, approximately?

The Witness: I would say between April 15th and June 15th.

The Court: 1952?

[fol. 315] The Witness: 1952, yes.

Q. Now, Mr. Carlin, there was an agreement reached on this Government work, that Bonita was to work?

A. Agreement? I don't understand.

Q. Was there an agreement between Rubin and Levy?

A. There was this profit-sharing agreement.

Q. After they had entered into this did Rubin bring certain samples down to Bonita?

A. He either brought them or asked that we obtain them.

Q. At the time he would bring the samples was there any discussion, did you have any conversations with Mr. Rubin about the contracts?

A. There wasn't much discussion about the contracts. I mean, if the garment was rejected there was no need to go further into the contract.

Q. Was anything said about obtaining the contracts?

A. Rubin continually assured us that when we had decided on the garment that he could obtain the contract for that garment.

Q. Did there come a time when Bonita bid on certain items?

[fol. 316] A. Yes.

Q. Do you recall what those items were?

A. They bid on—they finally bid on a garrison cap.

Q. And did Bonita receive these awards on these contracts?

A. They did.

Q. As an accountant for Bonita, Mr. Carlin, you were, were you not, familiar with the books of account of Bonita?

A. Yes.

Q. And in your position as accountant you had occasion to look at the checks, to post the checks and in general keep the books, is that correct?

A. Well, not keep the books. Examine the books, audit the books.

Q. Mr. Carlin, I show you Government's Exhibit 33 for identification and ask you if you have seen that before?

A. Yes, I have.

Q. Just tell us generally what it is.

A. It is a check drawn by Bonita on the Public National Bank, dated June 13, 1952, to the order of Leon Levy for $1,000, signed by Ades and Levy.

[fol. 317] Q. Did you come across this check in connection with your accounting duties?

A. Yes, I did.

Q. Are you familiar with the signature of Leon Levy and Maurice Ades?

A. Yes.

Q. Does that appear to be their signatures on that check?

A. It does.

Q. Do you recall something particular about this check?

The Court: What is the date of it, please?

The Witness: June 13, '52.

A. The entry covering this check in the cash disbursements book of Bonita was not classified by the bookkeeper. If a check were drawn to "rent," the bookkeeper would mark it "rent." If the check were drawn to "telephone" the bookkeeper would indicate "telephone."

There was no indication of what this was for on the books.

Q. What did you do about that?

A. I naturally had to ask what it was for of the book-
[fol. 318] keeper. She couldn't answer.

Mr. Sullivan: If the Court please, might I have the name of the bookkeeper to identify who the bookkeeper is?

The Court: All right. Give it.

The Witness: I don't recall the name of the bookkeeper. I don't think I see her here.

Q. You don't recall the name?

A. It is a Ruth something. Wasn't it Ruth?

Q. Do you recall what her name was?

A. I don't remember.

Q. And after you talked to the bookkeeper, whom did you talk to about the check?

A. I talked to Rubin and Levy.

Q. And what did Rubin tell you about the check?

A. That it was part of the expenses, that it was to pay him for expenses that he had incurred down in 16th Street.

Mr. Christy: I offer Government's Exhibit 33 for identification in evidence.

Mr. Rossi: If your Honor please, at this time I should like to object on behalf of the defendant Ades to the materiality and relevancy of this check.

The Court: Overruled.

[fol. 319] Mr. Gould: If your Honor please, I object to the document on behalf of the defendant Levy. I think that it is appropriate for me to point out to your Honor in connection with this objection that the two contracts of June, 1952, are contracts where the contracting officer was Major Farnell, who is not on trial.

The Court: What is the ground for the objection?

Mr. Gould: That it is not binding on any of the defendants and it relates to a completely different transaction than the one outlined in the indictment.

The Court: Overruled.

Mr. Sullivan: May I see that, please?

(Mr. Christy hands to Mr. Sullivan.)

Mr. Sullivan: If the Court please, I object to the admission of this check in evidence on the ground that it

obviously is not binding on the defendant Rubin because his name is not mentioned anywhere. Leon Levy cashed a thousand-dollar check, apparently.

The Court: Overruled.

Mr. Sullivan: If your Honor please—

The Court: I don't want any detailed discussion. You have made your objection and I understand it.

[fol. 320] Mr. Sullivan: If your Honor please, I have one other—

The Court: I don't want speeches in the presence of the jury on this.

Mr. Sullivan: May I say one last thing about the—

The Court: Go ahead, one last thing.

Mr. Sullivan: I object on the grounds that Mr. Levy is not a co-conspirator or named in the indictment, and under those circumstances I think it is also objectionable.

The Court: Overruled.

Mr. Treiman: I raise the objection, if your Honor please, on behalf of the defendant Wool on the ground that the stipulation entered into indicates that the defendant Wool came into the picture around September 12, 1952. Certainly this is in no way binding upon the defendant Wool.

The Court: I have made my direction at the early part of the trial. I took it subject to connection as to those defendants who as yet, at this time, haven't been established to be a part of the conspiracy, subject to connecting them with the conspiracy.

[fol. 321] Mr. Spar: If your Honor please, on behalf of the defendant Hort I make the same objection.

The Court: Overruled.

Mr. Spar: With the understanding that your Honor will make the same ruling.

The Court: For Mr. Pollack, no objection.

(Government's Exhibit 33 for identification received in evidence.)

Mr. Spar: Mr. Christy, may I inquire of you, sir, have you offered any other exhibits for identification beyond 21?

Mr. Christy: I have had a great many exhibits marked for identification, Mr. Spar.

Mr. Spar: Because my list goes to 21.

The Clerk: Exhibits 22 through 64 were marked for identification.

The Court: Show it to the jury.

Mr. Christy: I think, your Honor, I will withhold showing it to the jury until later on, if I may.

The Court: All right.

By Mr. Christy:

Q. Mr. Carlin, to go back a minute, prior to the time that [fol. 322] you had the meeting in Bonita, the first meeting in Bonita with Marvin Rubin and Leon Levy and Maurice Ades, had there been any discussion about obtaining Government contracts?

A. No.

Q. I think you testified, Mr. Carlin, that while you were the accountant you worked on the books of Bonita generally?

A. Yes.

Q. I show you Government's exhibit 22 for identification and ask you what that is.

A. It is a cash disbursements journal.

Q. And you worked on that, did you?

A. Yes.

Q. I show you Government's Exhibit 23 for identification and ask you if you will tell us what that is.

A. This is a petty cash journal, and I worked on this book.

Q. I show you Government's Exhibit 24 for identification and ask you if you will tell us what that is.

A. It is the general ledger of Bonita Originals, and I worked on that.

Q. I show you Government's Exhibit 26 for identification [fol. 323] and ask you if you will tell us what that is.

A. Accounts payable ledger of Bonita.

Q. Did you work on that book, sir?

A. My handwriting doesn't appear in it, but I recall working with it when I was here.

Q. I show you Government's Exhibit 27 for identification, and ask you if you will tell us what that is?

A. This is the cash receipts book of Bonita Originals and it is also a purchase book of Bonita.

Q. Did you work on that?

A. I did.

Q. Now I show you, finally, Government's Exhibit 28 for identification and ask you if you will tell us what that is.

A. It is the purchase book and cash receipts book of Bonita, and I worked on it.

Q. I do have one more, Mr. Carlin. I show you Government's Exhibit 29 for identification and ask you if you will tell us what that is.

A. It is the general journal of Bonita, and I worked on it.

Q. Were these books which you have just identified the [fol. 324] books kept by Bonita in the regular course of its business?

A. Yes.

Q. And was it the regular course of Bonita's business to keep such books?

A. Yes.

Mr. Christy: Your Honor, at this time the Government would offer into evidence Government's Exhibits 22, 23, 24, 26, 27, 28 and 29 for identification.

The Court: Any objection, gentlemen?

Mr. Gould: The same objection with respect to the defendant Levy, they are not binding on him.

The Court: If that is the only objection, the same ruling.

Mr. Treiman: Did I understand your Honor is now making the same ruling for all the defendants?

The Court: If your objection is based upon the same grounds that you made before, I am making the same ruling, that is correct.

Mr. Treiman: Yes, it is.

(Government's Exhibits 22, 23, 24, 26, 27, 28 and 29 for identification received in evidence.)

Q. Mr. Carlin, I show you Government's Exhibit 33 in [fol. 325] evidence and Government's Exhibit 22 in evidence and Government's Exhibit—

Mr. Carroll: I am sorry, your Honor, but I can't hear him.

The Court: I think you had better speak up.

Q. On Government's Exhibit 22, Mr. Carlin, I call your attention to page 106, that is the cash disbursements book. Is that check, Government's Exhibit 33 in evidence, reflected in the cash disbursements book?

A. It is.

Q. Does it indicate there how it is charged?

A. As I mentioned before, there is no description by the bookkeeper of what the item is.

Q. I show you Government's Exhibit 24 in evidence, which is the general ledger, and I call your attention to page 44 and ask you if the check, Government's Exhibit 33, is reflected on that page?

A. Yes, it is.

Q. How is that page headed?

A. Entertainment.

Q. In other words, that check, Government's Exhibit 33 in evidence, was charged to entertainment, is that correct?

[fol. 326] A. That is right.

The Court: Was there any formal written agreement worked out with Rubin?

The Witness: They had worked out a written agreement, but as I recall it was never signed, one of these things they never just got to in my time with the firm.

The Court: Go ahead.

Q. Mr. Carlin, on Government's Exhibit No. 22 in evidence, I call your attention to page 116. This is the cash disbursements book. Does this lefthand column on page 116 indicate the names of the persons to whom checks were drawn?

A. That is correct.

Q. More specifically I call your attention to the date November 7th, 1952, and I ask you if it appears from that book that on November 7, 1952, a check was drawn to the order of Marvin Rubin in the amount of $247.65.

A. The cash disbursements book reflects that.

The Court: Speak up, please.

The Witness: The cash disbursements book reflects just as you have stated.

[fol. 327] The Court: What is that now again? November 17th?

The Witness: November 7th.
The Court: November 7th.
The Witness: November 7, 1952.
The Court: Yes. What is the amount?
The Witness: $247.65.
The Court: And what is it charged to?
Mr. Christy: He has not testified as to how it is charged, your Honor. We will take care of that later.
The Court: All right.

Q. Mr. Carlin, did you ever have any discussions, conversations, with Marvin Rubin about inspectors on the Bonita contracts?
A. Mr. Rubin indicated that he could exercise some control over what—which inspector might be sent down to examine the work while it was being made.
Q. Now contracts were awarded on June 11th and June 12th, 1952. When in relation to that date, sir, did you have these discussions that you have just referred to?
A. Prior and after.
[fol. 328] Q. In other words, before the contract was awarded and afterwards?
A. Yes.
Q. Do you recall Mr. Rubin mentioning any one inspector?
A. I recall the name of one inspector.
Q. What was that name?
A. That name was Ienni.
Q. Do you recall his first name?
A. No, I do not.
Q. Will you tell us what Mr. Rubin said about Ienni.
A. When we learned that Ienni was to be the examiner for the contract Rubin stated that the man had worked as an inspector on another contract that Rubin had had with another manufacturer.
[fol. 329] Q. Did he say anything else about Ienni?
A. Only that was pleased to find him on the contract.
Q. That is, on the Bonita contract?
A. Yes.
Q. Did you have any discussions with Rubin about deviations of Bonita?
A. Yes.

Q. What were those conversations, as best you recall?

A. If it would be necessary to obtain minor deviations, he could very likely obtain them.

Q. Did an occasion arise when there was a deviation?

A. Yes.

Q. Will you tell us about that?

A. Well, I recall one particular time, it was technical in nature, when garments were made, caps in particular, the cloth is shaded; in order that you shouldn't have two different kinds of shades on one hat, the Government requires that each ply be carefully marked, so that the band wouldn't be a different shade than the crown of the hat, or something like that. In the processing—in the manu- [fol. 330] facturing of these caps, Bonita learned that it could keep the plies separated, that is, the shades separated, without marking them, by making sure they were processed exactly in the order in which the goods were cut, and we obtained a deviation to manufacture in that fashion.

Q. Did you ever have any conversations with Rubin about the extension on deliveries?

A. Yes.

Q. What did he say to you?

A. Well, there were times when it became necessary to obtain extensions; we weren't able to meet delivery dates, and Mr. Rubin obtained extensions of these delivery dates.

Q. Prior to the time he had obtained the extensions, you had talked to him about the extensions and what had he said to you?

A. Well, this was one of the minor deviations that he felt he could obtain if needed.

Mr. Christy: You may inquire.

Mr. Gould: Mr. Christy, may we have the cash disbursement book? I don't remember what number you gave it.

Mr. Christy: You mean the page that I referred to?

[fol. 331] Mr. Gould: Yes.

Cross examination.

By Mr. Gould:

Q. Mr. Carlin, while you were connected with Bonita, you had nothing to do, did you, with Mr. Harry Lev?

A. No, I did not.
Q. His name wasn't mentioned in any way?
A. No, sir.

By the Court:

Q. When did you sever your connection with Bonita?
A. October of 1952.
Q. October of 1952?
A. Yes.
Q. Then how long were you employed by them altogether?
A. About nine months.

The Court: I understand.

By Mr. Gould:

Q. You first went to work for them in the beginning of 1952, in January; is that correct?
A. No, I said about March 1st.
Q. March 1st. Then you worked for them until some [fol. 332] time in June or July; isn't that right?
A. Yes.
Q. Then you went back to work for them in October of '52?
A. That's right.
Q. And you said you worked for them for about six weeks, from October 1952. So you were in error, were you not, when you responded to his Honor just now that you severed your connection with them in October of '52?

Mr. Christy: I don't think he was in error, sir.

A. I don't think so. There might be a gap of 30 days, but I would like to straighten the record, if it is important; nail it down a little closer.

The Court: Yes, what is it? You say you want to straighten the record.
The Witness: Well, I am just a little confused here. I would like to fix the date
The Court: Well, now, is it a fact that you went back to work in October, 1952?

The Witness: It might have been September.
The Court: Might have been September. And at any rate, how long did that last employment last?
[fol. 333] The Witness: Approximately six weeks.
The Court: Very well. All right.

By Mr. Gould:

Q. And was that the end of your relationship with them, when those six weeks expired, sir?
A. Yes.
Q. You had nothing further to do with the company?
A. Except that they owed me money and continued to pay me until—that was my only connection.
Q. And during that period, until you left, Mr. Lev had nothing whatever to do, as far as you know, with any of the transactions that you have described?
A. That is correct.

Mr. Gould: I have no further questions.
The Court: Mr. Sullivan?
Mr. Sullivan: If the Court please, I wonder if your Honor would permit a temporary suspension for the next five or ten minutes, so that I could discuss something with my client?
The Court: All right, we will take our mid-morning recess.
[fol. 334] (Short recess.)
The Court: Go ahead, Mr. Sullivan.

Cross examination.

By Mr. Sullivan:

Q. Mr. Carlin, you were first recommended to Bonita by whom?
A. By Capelin Associates.
Q. How do you spell Capelin again?
A. C-a-p-e-l-i-n.
Q. Is that the name of an individual who owns the company?
A. Yes.

Q. What is the name of Mr. Capelin?

A. Stanley Capelin.

Q. Was it Stanley Capelin who recommended you to Mr. Levy?

A. To Ades and Levy.

Q. Both Ades and Levy. Had Capelin Associates done some engineering work for Levy and Ades prior to your being introduced?

A. No.

Q. Mr. Carlin, the Capelin of Capelin Associates is your brother, is he?

A. He is.

Q. When you were introduced to Mr. Ades and Mr. Levy, [fol. 335] do you recall whether or not you were identified as a brother of Mr. Capelin?

A. I do not recall.

Q. Did you at any time volunteer to Mr. Levy that you were in fact Mr. Capelin's brother?

A. I don't recall whether I did that or not. I know that they knew me as his brother.

Q. You say that Mr. Levy knew you as his brother, knew you as Mr. Capelin's brother?

A. It was never denied.

The Court: He said, "they"; he didn't say "Mr. Levy."

Q. Did Mr. Ades know you as Mr. Capelin's brother?

A. I don't know at which point they knew me, but certainly it was known that I was a brother.

Q. Mr. Carlin, isn't it a fact that it was long after these transactions that took place that finally your identity as Mr. Capelin's brother was disclosed to Mr. Levy?

The Court: May I ask what is the materiality of this?

Mr. Sullivan: I am leading up to a point, if the Court please.

[fol. 336] The Court: Will you make the point? You have spent five minutes on Capelin, and I don't see that they have anything really to do with the case.

Q. Mr. Carlin, was a great deal of money, or was any sum of money of any substantial amount ever owed to Capelin Associates by Levy and Ades, or Bonita Originals?

A. After they began, after they had—when the contract

was left finally, they engaged Capelin to do engineering work at the plant, and as a result of that engagement moneys were owed.

Q. When you returned to the employ of Bonita Originals in July of 1952, I believe it was?

A. Yes.

Q. Was your re-employment effected at the insistence of your brother?

A. That's right.

Mr. Christy: Just a minute, your Honor. He returned in September or October, I think, not July.

The Court: All right.

The Witness: That is correct.

Q. Well, then in September or October your re-
[fol. 337] employment was effected at the insistence of your brother?

A. That's right. I wouldn't say "insistence." He didn't have the right to insist. He asked them.

Q. Did he tell them that he wouldn't go ahead with his work and would institute an action on his bill if you weren't re-employed?

A. I don't know what he told them.

Q. Mr. Carlin, have you had any experience in doing accounting work for Government contractors other than Bonita?

A. Yes.

Q. In the course of your work for other contractors, have you ever had occasion to observe that deviations were sought by the contractors and granted by the Government?

Mr. Christy: Objection, your Honor.

The Court: Overruled.

A. I actually had no intimate experience which could—which I could say yes to that statement.

Q. Mr. Carlin, could you tell us whether or not you recall that extensions of time, extension of time on deliveries was sought and granted to other contractors whom you worked for?

[fol. 338] A. I had no such experience.

Q. Mr. Carlin, did you have anything to do with making

up the bid on the Bonita Originals' contract, the first contract?

A. To my recollection, no.

Q. Prior to the awarding of the garrison caps, Bonita, as I understand your testimony, Bonita, Mr. Ades and Mr. Levy, examined other possible Government jobs to do?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Have you any idea approximately how many there might have been?

A. About three, I would say.

Q. As I remember, you stated that they didn't go ahead with making bids because they felt that they couldn't make the garment, any particular garment, profitably.

A. That's right.

Q. Did Mr. Rubin, on any of these other garments, make any statement that he could get the bid at a profitable price?

A. I don't quite understand what you are asking.

[fol. 339] Q. On the garments, where it was decided that you wouldn't make a bid, will you tell us how you arrived at the conclusion that a profit couldn't be made?

A. We, through Capelin, we endeavored to find out what it would cost, or whether we had the necessary machinery to manufacture the garment at all, because we need certain special machines that the contract—the manufacturing plant, which was the Maurice Embroidery Works, whether they had such equipment; whether we would have to retool or buy a lot of machinery, and it didn't make sense to make a garment under those circumstances.

Q. You knew, did you not, Mr. Carlin, that in each one of these possible Government bids it was to be secret competitive bidding; is that correct?

A. It was my understanding that that was the way the contracts were made.

Q. Have you ever had any experience in making up bids for other contractors.

A. No, I have not.

Q. Do I understand your testimony, Mr. Carlin, that after the securing and the awarding of the garrison hat

[fol. 340] contract, that Mr. Rubin told you he was overjoyed that the inspector was going to be Ienni?

A. I didn't say "overjoyed." I said, "pleased."

Q. He was pleased. Could you fix the time of that conversation for me as accurately as you possibly can, when he said he was pleased that Ienni was going to be the inspector?

A. Well, that would be—that would be perhaps a week before Ienni actually went down there.

Q. Is that the first time that any inspection was necessary to be made on the item, on the garrison cap?

A. No. There had to be an inspector from the very inception of the contract, and Ienni, to my recollection, was not the first inspector on this contract.

Q. So that you recall an inspector by the name of Forcillo; do you remember that name?

A. I don't.

Q. Mr. Carlin, when is the first time that you gave a statement to any Government agency concerning the events [fol. 341] that you testified to here this morning?

Mr. Christy: I object to that, your Honor. I don't think it is relevant. He hasn't shown any foundation to ask such a question.

The Court: Overruled.

A. I recall the circumstance. I can't recall the time.

Q. Tell us the circumstances, Mr. Carlin?

A. I received a call from Government agency, saying that they wanted to see me at my office.

The Court: Do you remember which agency it was?

Q. At what time, sir?

A. I don't remember that name. I—it developed later that these—I learned later that these gentlemen from the Government were—the first contacts I had was what was later to be the hearings held in Washington.

The Court: Senate investigators?

The Witness: Yes, they represented the Senate Committee; that's right.

Q. Could you tell us approximately when these gentlemen called you and came to meet you?

[fol. 342] A. I don't recall the years and months, but perhaps six months before those hearings were held in Washington.

Q. Would the names Poole and Balaban—

A. Balaban definitely and—yes, Poole and Balaban were the gentlemen who—

Q. Did these Government officials come to your office?

A. Yes, they did.

Q. Where was your office then?

A. 11 West 42nd Street.

Q. Did you give a statement concerning these events to those Government officials?

A. I did.

Q. You signed a statement?

A. I believe I did.

Mr. Sullivan: If the Court please, I ask for the production of that statement.

Mr. Christy: No proper foundation for that, your Honor.

The Court: I don't think you have laid any foundation merely by asking if a statement was given.

Mr. Sullivan: What was your ruling, if your Honor [fol. 343] please?

The Court: I don't think you have laid sufficient foundation for the production of the statement?

Mr. Sullivan: I would ask the Court to look at the statement to see if there are any inconsistencies?

The Court: I don't think you have even laid a foundation for that.

Q. Mr. Carlin, did you tell the Government officials on that occasion anything different than what you have testified to here this morning, that you can remember?

A. Nothing that I can—nothing different that I can remember.

Q. Mr. Carlin, when you made a notation in the general ledger—

The Court: I want to get one thing clear, and if I am in error I want to be corrected.

I have been re-reading the indictment. There has been much reference here on cross-examination to this matter of "closed bids" and "sealed bids" and so forth. The Government does not charge, as I see in the indictment,

that any of the co-conspirators fraudulently obtained the [fol. 344] contracts, but as I read the indictment it says, "For the purpose of inducing them to corruptly disclose confidential information prior to the awarding of Government contracts, which information would enable said defendants to be low bidders on said contracts."

In other words, I take it from that you ask that the inference be drawn then that the contract was obtained illegally, by reason of this information being given in advance; is that your contention?

Mr. Christy: Yes, your Honor.

The Court: In other words, you still agree that it went to the low bidder, but it is your contention that they became low bidders by reason of this advance information.

Mr. Christy: Not necessarily, your Honor. We haven't made that claim. We make the statement that they received advance information, which they were not entitled to.

The Court: That is correct. That is what you say in the indictment.

Mr. Christy: That is right.

The Court: "Which information," you go on to say, [fol. 345] "would enable said defendants to be low bidders on said contracts."

Then you also charge that they would all be induced to corruptly grant deviations in the specifications.

Mr. Christy: That is correct.

The Court: Step No. 2.

Mr. Christy: That's right.

The Court: Then third, as I see it, the third step, they would give money and other things for the purpose of influencing the decisions of the employees on actions and matters pending before said clothing inspectors in their official capacity.

Mr. Christy: That is correct.

The Court: Those are substantially the three steps; isn't that correct?

Mr. Christy: That's right.

The Court: The point I want to make clear is that there has been constant reference, and I want to get this clear in my mind as well as the jury's, that there is no contention on your part that the contracts were awarded to other than a low bidder.

Mr. Christy: That is correct, your Honor.

The Court: But you claim that they became low bidders [fol. 346] and that these other acts were carried out through the conspiracy.

Mr. Christy: That is correct. We don't make the contention that they actually opened the sealed bids and looked at them.

The Court: I understand. I just wanted to make that clear.

All right.

Mr. Sullivan: May I have the exhibit which indicates that this thousand dollar check was—

Q. Mr. Carlin, I show you Government's Exhibit—I don't know what the number of it is—24—and ask you to look at account No. 44, headed "Entertainment."

A. Yes.

Q. If I understand your testimony, did you put this thousand dollar check under the item, under the category of "Entertainment"?

A. I did.

Mr. Treiman: I am sorry. I didn't understand that answer.

A. I did.

The Court: He said he did.

After talking to whom?

[fol. 347] Q. Did you—

The Court: After talking to whom?

The Witness: After talking to Rubin and Levy.

Q. Did you tell Mr. Poole and Mr. Balaban on your meeting with them the first time the Government agents talked to you that you had put that check under the category of "Entertainment"?

A. I posted it, yes.

Q. You posted it in the books yourself?

A. Yes, I posted it myself.

Q. Now, did you tell Mr. Poole and Mr. Balaban that it was you who posted it under the category "Entertainment"?

A. I don't know whether I did or didn't. It is in my hand-

writing. If they asked me, I must have surely said that I did.

Q. When you posted that thousand dollars under the category "Entertainment," had you looked at the checkbook of Bonita Originals, from which this check had been taken?

A. Yes.

Mr. Sullivan: Do you have that checkbook, Mr. Christy?

[fol. 348] Mr. Perrotta: You have the stub in your hand.

Mr. Sullivan: Do you concede that is the stub from that checkbook?

Mr. Perrotta: I gave it to you.

Mr. Christy: Yes, I will concede. Do you want to mark it for identification?

Mr. Sullivan: Well, without marking it for identification, if the Court please, I'd like to offer in evidence this stub from the Bonita Originals checkbook, reflecting the thousand dollar check which has been admitted in evidence as check No. 2213, dated June 13, 1952.

The Court: Any objection?

Mr. Christy: Government has no objection to it, your Honor. I don't know that it is relevant.

The Court: All right, let's receive it.

(Defendants' Exhibit A received in evidence.)

The Court: All right.

Let's move along if we can, Mr. Sullivan.

Mr. Sullivan: Yes, Judge. I am sorry.

By Mr. Sullivan:

Q. Mr. Carlin, when you made the entry of one thou-

[fol. 349] sand dollars, did you observe that checkbook which said that the check 2213 was an exchange?

A. I did.

May I hold it a moment, please?

Q. Yes.

A. I would like to—

Q. Just let me have the document, please.

A. I would like to withdraw that, what I just said. I am not entirely familiar with what was on the check stub at the time it was drawn, at the time I made the entry.

[fol. 350] Mr. Sullivan: I would like, if the Court please, to call it to the attention of the jury and show them the stub for Government's Exhibit 33, a thousand dollar check has on the stub "Exchange," not "Entertainment."

The Court: Don't make that type of statement. Now, Mr. Sullivan, if you want leave, first ask and then, after we grant you permission, show it to the jury. But while you are asking for it to show it to the jury or making a gratuitous statement.

Mr. Sullivan: It was unintentional. If your Honor please, I am sorry I did that. But I don't think it is gratuitous and it certainly couldn't be with any intention.

The Court: Go on.

Q. Now, Mr. Carlin, I show you Government's Exhibit 22 and I call your attention on page 107 to check 2170 in the sum of $1,000 and ask you can you tell this Court and jury now what that check is?

Mr. Christy: I object to that, your Honor, as certainly beyond the scope of direct.

The Court: Why? It is another check?

Mr. Christy: I presume so. I don't know anything about [fol. 351] this check, your Honor.

The Court: I am asking you, is it another check?

Mr. Christy: It must be, your Honor.

The Court: All right. If it is another check, I sustain the objection.

Q. Mr. Carlin, did you ask the bookkeeper and the officials of Bonita Originals for explanations of some of these items which are on pages 106 and 107?

Mr. Christy: I object to that, your Honor, also.

The Court: Overruled.

Did you?

The Witness: Yes, I asked.

Q. Now did you ask them for an explanation of the thousand dollar check?

A. The one that previously put in evidence?

The Court: 33 in evidence.

Q. Yes.

A. Yes.

Q. Did you ask them for any explanation of check No. 2170 for a thousand dollars in the same month of 1952?

Mr. Christy: I object to that, your Honor.

[fol. 352] The Court: That is overruled.

Did you?

The Witness: Yes.

The Court: All right.

Q. Now, Mr. Carlin—

The Court: In what instances would you ask for an explanation? Let us get right to it.

The Witness: If the bookkeeper failed to classify an item I would have to ask further what it was.

The Court: And by that you mean, failed to classify it in the books of the company as distinguished from the stub of the checkbook?

The Witness: That is right.

The Court: As auditor you went to the books of the company to look for a classification?

The Witness: The books, the records, the bookkeeper, and if I failed to get some answer there then I would have to go to the officers.

Q. Will you tell us what classification the check that I have just called No. 2170 for a thousand dollars payable to Leon Levy, what classification that was put under in the books of the company?

[fol. 353] A. It was shown as a charge to Leon Levy.

The Court: That wasn't charged to entertainment?

The Witness: No.

Q. Now, Mr. Carlin, did you observe, in checking through the checks of Bonita in June, well, April, June or—April, May and June whether there were frequent or a number of inscriptions categorizing checks as exchanges?

A. There were such checks.

Q. Did you ask for any explanation of what those inscriptions meant?

A. They very often required no explanation. Of cour I would ask where it wasn't apparent.

Q. Would you tell the Court and jury what an exchan would be?

A. Well, in this particular case Leon Levy, prior to an during the early part of my engagement, would lend mone to Bonita to help them financially. When he would put in it was termed an exchange, which in accounting termino ogy would be a temporary loan. And he subsequently en deavored to withdraw a like amount so the item woul wash itself out or be an exchange, the loan for a repay [fol. 354] ment. And the thought would be a relatively short interval.

Q. Was it usual for Mr. Levy to make advances to th corporation during that interval?

A. I said it wasn't unusual.

Q. Can you recall what bank account he drew the money to make the loans to Bonita Originals?

A. No, I do not.

Q. Can you recall whether Mr. Levy had a private personal bank account in addition to the Bonita Originals account?

A. I never actually knew of the existence of such an account.

Q. Can you tell us from looking at the books whether or not any of the exchanges which you have just testified to were paid into—the loans were paid into Bonita by way of checks or by way of cash?

A. To my knowledge whenever Leon Levy put money into the business it was by check.

The Court: Anything further?

Mr. Sullivan: I think that is about all, Judge.

The Court: All right. Well, can we go on?

[fol. 355] Mr. Sullivan: That is all, Judge.

Cross examination.

By Mr. Rossi:

Q. Mr. Carlin, you were pretty familiar with Bonita's operations during the period of time that you worked for them?

A. Yes.

Q. Could you explain to us where the factory of Bonita Originals was?

A. In Mayaguez, Puerto Rico.

Q. Who was in charge of that factory?

A. At the time I came into the firm, Mr. Ades' brother was in charge.

Q. And after Mr. Ades joined Mr. Levy in Bonita Originals?

A. Just a moment. Would you repeat that, please?

Q. After Mr. Ades and Mr. Levy became partners in Bonita Originals who was in charge of the factory in Puerto Rico?

A. Well, remember the date that they became partners prior to my becoming the accountant. When I came I found the condition that I spoke of, that Ades' brother was down at the factory.

Q. Yes. But shortly after that, in June, they obtained [fol. 356] these contracts, did they not?

A. Yes.

Q. When these contracts were to be serviced by doing the factory work, it was done in Puerto Rico?

A. The work was done in Puerto Rico, yes.

Q. None of the work was done in New York?

A. No.

Q. The man in charge of the Puerto Rico plant was whom?

A. Ades' brother.

Q. At the time the contracts were obtained?

A. That may not be so. I know that he left some time about that time, I don't know if it was before or after, but it was around that time.

Q. Perhaps I can refresh your recollection. Isn't it a fact that after these contracts were obtained by Bonita Originals that Mr. Maurice Ades went down to Puerto Rico to take charge of the factory operations for Bonita?

A. Well, whether to take charge or to assist, he went down to assist in—

Q. What I asked is, the operation, so far as Bonita Originals is concerned, was in Puerto Rico in this fac- [fol. 357] tory?

A. No, when I came into the firm he was more of a salesman and his brother ran the factory.

Q. We are talking about the period of time from June on, June 1952 on, when they obtained these Government contracts to make the garrison caps. You have already testified that these caps were made in Puerto Rico.

A. That is right.

Q. Isn't it a fact that Mr. Ades, Maurice Ades, not merely his brother, was in charge of the factory at Puerto Rico and that was his job, as far as these contracts were concerned?

A. Yes.

Q. All right. Now who ran the New York office?

A. It was originally run by Levy and Ades. After the Government contracts were let Levy was on the spot, he watched the New York office.

Q. In other words, Mr. Levy was in charge of the New York office of Bonita Originals and Mr. Ades was down in Puerto Rico in the factory?

A. After the contracts were let with the Government.

[fol. 358] Q. Yes, that is right. Now at this first meeting with Mr. Rubin and Mr. Levy and Mr. Ades, did any question come up about lower costs of production in obtaining the Government contracts?

A. I do not recall any specific conversation.

Q. Well, perhaps this would refresh your memory.

Isn't it a fact that Mr. Rubin told Mr. Levy and Mr. Ades that because labor was cheaper in Puerto Rico you could probably put in a lower bid on Government contracts than someone who had a factory right here in the States?

A. Yes.

Q. In other words, he felt, Rubin did, that you could obtain a contract or get a lower bid and, therefore, have a better chance to obtain a Government contract because of the lower labor cost in Puerto Rico?

A. That is true.

Q. Now in the area of filling out invitations for bid and seeing people down at 16th Street and the course of communication between the Government agency, and Bonita, who was in charge of that phase of the operation?

[fol. 359] A. Rubin.

Q. Rubin Did Mr. Ades do anything particularly active, or did he take an active part in that phase?

A. No.

Q. Who prepared the invitations to bid on these first two Government contracts?

A. My recollection, Rubin.

Q. Mr. Ades signed them, is that correct?

A. I don't recall the actual signature. It could very well be.

Q. Mr. Ades was the president of Bonita Originals, therefore in order to submit a bid isn't it a fact that an officer of Bonita had to sign the invitation to bid?

A. An officer had to sign, yes.

Q. And since he was president he was the logical person to sign?

A. Logical, yes.

Q. Although he actually had not prepared them.

A. No, he did not prepare them.

Q. Now you testified previously with regard to the ex- [fol. 360] penses that Mr. Rubin allegedly asked Levy and Ades to give him in connection with his activity on these Government contracts, is that correct?

A. Yes.

Q. You stated that Mr. Rubin said that he would need expenses to take care of Government people so that—

A. I don't know exactly the expression I used but it sounds correct.

Q. Isn't it a fact that Mr. Rubin did not draw a salary with Bonita after they started working on these Government contracts?

A. That is correct.

Q. In other words, when he came to Bonita and assured them that he would be of help in getting Government contracts he wasn't drawing a salary of any kind for this work?

A. That is right.

The Court: Did Rubin receive anything from Bonita by way of distribution of the one-third of the profits?

The Witness: There were no profits in my time.

[fol. 361] The Court: Oh, in your time. All right.

Q. Actually the understanding was that he was to b paid one-third of the profits at the end of the contract, isn' that true?

A. When the profits could be determined, which woul necessarily be at the end of the contract.

Q. Wasn't it possible for Mr. Rubin, being in a positio where he was working on this procuring of the Gover ment contracts for Bonita, and since he was without a salary from Bonita, might have gone to Levy and Ade and said, "I need some money for expenses, of my ow expenses"?

The Court: I will sustain that objection.

Q. Didn't he in fact do that?

A. For his personal expenses?

Q. In connection with his activity.

Mr. Christy: I object to that also, your Honor.

The Court: Do you know whether he ever went and sai he needed money for personal expenses, is the questio

The Witness: I know of no such instance.

The Court: Very well.

Q. In other words, you would have us believe that M [fol. 362] Rubin was operating in this area of obtainin Government contracts for Bonita without a salary an without demanding any expenses for himself from Lev and Ades?

A. That was precisely my understanding. Mr. Rubin wa —had a salary from another source at the time. We kne that.

Q. Now, would you say tha' Mr. Levy and Mr. Ades too a passive role, that is to say, a nonactive role, in the pro curing and directing of Government contracts for Bonita'

The Court: I will sustain that objection.

Q. Now with regard to Government's Exhibit 33, thi check for $1,000, it is a fact, is it not, and you have th exhibit before you, that a check for $1,000 drawn to th order of Mr. Levy was entered on the books on June 24t some 11 days after this first check which the Governmen has introduced?

A. There is a check for a thousand dollars drawn 11 days, thereabouts, after the Government exhibit check.

Q. And isn't it true from your examination of this cash disbursements book that there is no explanation in that book for this second check of June 24th?

[fol. 363] A. That is correct.

Q. In other words, this explanation was introduced somewhere else in the books of Bonita Originals, but not in this book?

A. That is right.

The Court: Where was that explanation for the second check?

The Witness: The fact that it is posted to the general ledger under the item of Leon Levy will explain that it—what the nature of the item is.

The Court: What would it mean to you?

The Witness: To me it would indicate that it is returning the moneys which Leon Levy had previously given to Bonita.

The Court: But that wasn't the course followed with respect to Exhibit 33, the June 13th check?

The Witness: No.

The Court: So that it was clear to you when you looked at the books that this wasn't an exchange transaction.

The Witness: Wait a minute.

[fol. 364] The Court: The June 13, 1952—

The Witness: Oh, yes, the June 13th check wasn't a—it was a—I was able to obtain an explanation that the June 13th check wasn't an exchange while the later one was an exchange.

The Court: And did you get any explanation with respect to the later one, an oral explanation?

The Witness: Yes.

The Court: From whom?

The Witness: From Levy.

The Court: From Levy. How about the first one, the June 13th, Exhibit 33, who gave you that explanation?

The Witness: I got that from Rubin and Levy.

By Mr. Rossi:

Q. But, as a matter of fact, the check stub for the first check dated June 13 carries the description "Exchange"?

A. It carries that legend.

Q. Although it is not so described in the cashbook?

A. That is right.

Q. And yet you say you were able to distinguish between these two $1,000 checks, one introduced by the Govern- [fol. 365] ment under date of June 13th with no explanation in the cashbook, and the other one on June 24th, you would have us believe that you remember that distinctly?

A. It not a question of remembering. I know what I did. This is a matter of record. And I wouldn't do what I did without obtaining an explanation. I wouldn't call "cash" "telephone."

Q. But there is no explanation on the ledger sheet?

A. No, but it isn't necessary to put an explanation in here if I have it in here. I know what such items are. When I get through my examination—

Q. Pardon me. If you are so sure that you know what each item was, why was this marked in exchange in fact when it was entered under entertainment, the June 13th check?

A. Because we have something carried—the label is no reason is no reason for me to accept that label, under the rather unusual circumstances where the bookkeeper having seen it marked "Exchange" doesn't make it "Exchange" in the cash disbursement book; there is a discrepancy that [fol. 366] I have to have explained to me.

Q. Would you examine now in the cash disbursement book with regard to this check of June 24, 1952 and will you notice the check number entered therein?

A. I see the number.

Q. Would you tell us what that number is?

A. 2170.

Q. Is that check number in order with the checks before it and after it?

A. No, it is not in numerical order.

Q. This check is inserted in the cashbook out of the regular order?

A. Yes.

Q. Isn't that somewhat unusual?

A. No, it happens often, in bookkeeping practice.

Q. The check that is out of order with the checks numbered before it and after it and which is identical in amount with the Government exhibit which was supposedly given, or cash, ten days before, eleven days before and which carries no explanation for it on the cashbook, can you find that situation not unusual?

A. You are relating it all together. I only said that it [fol. 367] is not unusual to have checks out of numerical order in the cashbook.

Q. I am relating all the facts relating to these checks, these two $1,000 checks in June 1952. These are the facts, are they not?

A. You have confused me.

Q. Well, I am confused.

A. I can only say as I said before, I obtained an explanation of each check and the way I have so classified them, one is a charge to Leon Levy and one as entertainment was the way it was explained to me at the time I made the examination and to the best of my knowledge and belief that is what they were and are.

Q. In view of your admission of your confusion with regard to these checks, isn't it possible—

The Court: No. He didn't say he was confused with respect to the checks.

Mr. Rossi: I am sorry. I retract it.

The Court: You asked him about usual and unusual, and you said you will get it confused.

Q. With regard to this first check where the stub shows that it was issued supposedly for exchange and where it is entered elsewhere as a charge to entertainment, and [fol. 368] where it is entered in the cashbook with no explanation whatsoever, isn't it possible that this first check of June 13, which is Government's Exhibit, was not in fact the one which you received an explanation for but rather the one of June 24 might have been that check?

A. I very much doubt if that is correct.

Q. But you are not positive?

A. I am certain at the time and I must have made ever effort to be certain.

The Court: Everything you said here today you ar positive of?

The Witness: I am positive that that first check wa explained to me as entertainment at the time and wa so used, and the second check was satisfactorily explaine to me, and I contend that it was a legitimate exchang as I have labeled it.

Q. Let us come down to this question of deviation. Ar I correct in assuming that you have testified that certai deviations arose during the course of these two contra obtained by Bonita?

A. Yes.

[fol. 369] Q. Will you tell us who took care of thes deviations, who attended to them?

A. Marvin Rubin.

Q. Did Mr. Ades have anything to do with taking car of or straightening out the deviations on these contracts?

A. I don't recall that he had anything to do with them

Q. Are you familiar with the practice that obtained in Bonita's with regard to the signing of the checks in June, 1952?

A. I think I am.

Q. You were with them until October, 1952, is that correct?

A. Well, there was a gap.

Q. Well, as far as you know, shortly after this June 13th check, 1952, wasn't it a fact that Mr. Levy alone signed checks for Bonita?

A. The check has two signatures.

Q. I know. I say shortly thereafter.

A. There was a time when we had to permit Leon Levy to sign alone, because it was awkward to get two signatures.

Q. Because this other man was down in Puerto Rico

[fol. 370] and you couldn't send checks down for signature?

A. That is right.

Q. So that shortly after Mr. Ades left for Puerto Rico Mr. Levy was in charge of the bank account and was signing checks?

A. That is correct.

Q. There was some previous testimony regarding these exchange transactions in the Bonita books. Would you explain to me exactly the mechanics of the typical exchange transaction, how it took place, what happened?

A. The corporation would have to issue certain checks for expenses which might be more money than they had in the bank. Mr. Levy might lend them a thousand dollars, fifteen hundred dollars from his personal funds. And he usually, immediately, took a check of a like amount at once which he held and redeposited it to his personal account as soon as funds became available in the corporation.

Q. In a situation of that kind, it was in effect a loan to the corporation by Mr. Levy?

A. It was in effect a short term loan.

Q. Yes. Why wasn't it entered on the books as a loan rather than an exchange?

[fol. 371] A. We used the terms interchangeably.

Q. I see. Now are you familiar with the fact that between the period of June 13, 1952 and October 9, 1952 there were some ten checks drawn to the order of Mr. Levy and marked to exchange?

A. I wasn't the accountant during that entire period. I don't know what checks were drawn to Levy.

Q. You brought Mr. Rubin in to meet Mr. Ades and Mr. Levy at the very beginning, isn't that a fact?

A. Yes.

Q. And at the time you brought him in it was your understanding that Mr. Rubin was looking for a factory in Puerto Rico, is that correct?

A. That is right.

[fol. 372] Q. So you thought to connect these people together so that they could perhaps salvage whatever business was left in Bonita Originals, is that correct?

A. Not a question of salvage.

Q. You testified previously that the business was in a precarious position, isn't that so?

A. They were in a precarious position when I became their accountant.

Q. And that was when?

A. March 1st, 1952.

Q. When was it that Mr. Rubin came into the picture?

A. April, May, 1952.

Q. Shortly thereafter, in other words?

A. Yes.

Q. In other words, it was your attempt as the accountant to bring in someone who might possibly help Mr. Levy and Mr. Ades in their business, which was in a precarious position?

A. You dwell on the word precarious. Their position had improved in the time I was with them. I introduced Rubin to assist—

Q. All I am asking, Mr. Carlin, is your motive in bringing these people together; that was your motive, was it [fol. 373] it?

A. To help create additional profits in the business. I thought that the influx of Government business or any business would serve to improve the financial status of the company.

Q. I don't want to belabor the point, but isn't it a fact that at the end of 1951 Bonita had lost considerable money?

A. That is true.

Q. And that they had very little money in the bank?

A. That is also true.

Q. So therefore the position was not what you would call strong or even average with regard to operating in this field of children's garments?

A. Their position was weak at the time Rubin came into the firm.

Q. That is what I meant by the word precarious. So you brought in Mr. Rubin with the hope and expectation that they would be able to do some—what? Business with the Government?

A. Yes. That the Government—the factory had excess capacity and we thought we might make Government work. [fol. 374] Q. Now at this first meeting was it your understanding that Mr. Rubin had undertaken to promise that they could get a Government contract immediately because of quote influence unquote on 16th Street?

A. Merely because?

Q. Yes.

A. I wish you would clarify that a little.

Q. Well, he didn't come in and say, "I can get these Government contracts and I can get them for one reason, that I know these people on 16th Street, that they will do me a favor"?

A. That was the primary statement he made.

The Court: Was that the primary purpose of the arrangement made between the parties?

The Witness: Oh, yes. Rubin was employed to obtain these Government contracts. That was his sole purpose.

Q. I am not questioning that point. We are questioning how he said he could get them. Didn't he say, as you had testified previously, that he thought they could get them because of the labor being cheaper in Puerto Rico; isn't that a fact? You have so testified. Well, you have, haven't you?

[fol. 375] A. Yes, I have.

Q. So then that wasn't the only reason that he could have mentioned at this meeting?

A. That is right. It wasn't the only reason.

The Court: What were the other reasons? Did you hear my question?

The Witness: I did. It is still a combination of the word. For one thing, Mr. Rubin felt that he could, he felt he could obtain the contracts. Another thing he wanted, he wanted the factory in Puerto Rico because it had a low cost and would enable him to put in a low bid which would tend to result in a greater profit than if made in the States.

The Court: Did he enlarge on how he knew he could get these contracts?

The Witness: Not specifically.

The Court: Did he in a general way?

The Witness: In a general way he merely assured us that he could obtain them.

The Court: By reason of what fact?

The Witness: The fact that he had intimate acquaintances at 16th Street that could help him obtain the contract.

Q. At this meeting did he mention that he would need [fol. 376] any specific amounts to pay these people on 16th Street?

A. He again stated that he would have expenses in connection with obtaining the work.

Q. Let me ask one final question. You had brought these people together, had you not?

A. Yes.

Q. You were there at their first meeting?

A. Yes.

Q. Was it your understanding that you were bringing together these people for the purpose of obtaining Government contracts by improper means?

Mr. Christy: I object to the question; it calls for a conclusion, your Honor.

The Court: I will overrule the objection.

Q. Well, was it?

A. No.

Mr. Rossi: No further questions, your Honor.

Mr. Treiman: I will pass at this time.

The Court: Anything further?

Cross examination.

By Mr. Spar:

Q. Mr. Carlin, sir, I represent the defendant Mella Hort. Would you say that as an accountant, as a business [fol. 377] man, that it is normal for a company that is having financial difficulty to seek new fields of endeavor if they have the machinery?

The Court: Oh, come on. These are such elementary matters.

Mr. Spar: All right.

The Court: Of course any company would seek new fields of endeavor and any company would try to get more business. The question here is whether or not it was lawful. Let us get to it.

Q. Now, Mr. Carlin, isn't it a fact that the first time that you heard the name of Mrs. Hort was by a telephone

call from her to you after the contract was given, when she introduced herself as a clerk employed by the Procurement Division of the Quartermaster Corps?

A. I don't recall that conversation at all.

Q. Did you have any conversations with Mrs. Hort after the contract was given?

A. I don't recall having any.

Q. Isn't it a fact, sir, that it was you who spoke to Mrs. Hort and told her that you were leaving the company and that all further transactions with the company should be with Mr. Rubin?

[fol. 378] A. I most certainly did not.

Q. Is it your testimony today, sir, that you never spoke to Mrs. Hort by telephone with relation to these contracts?

A. I don't recall speaking to Mrs. Mella Hort at any time for any reason.

Q. May I help refresh your recollection?

A. Certainly.

Q. Did she at any time call you in reference to some loyalty reports that were necessary in the files?

A. I don't think she did.

Q. Did she call you about anything routine that may have been in the file and introduced herself to you as an assistant to George Earnshaw of the Quartermaster Corps?

A. I recall no such conversation between Mella Hort and myself.

Q. Would you say you never spoke to her?

A. To the best of my knowledge I would say that—I might just elaborate further. She might have called me in a routine matter that was—that I just gave no thought to at the time, but I actually recall that I never spoke to Mella Hort.

Q. Is it possible that she may have called you and merely [fol. 379] stated that she was an assistant to Mr. Earnshaw at the Quartermaster Corps?

The Court: He says he doesn't remember.

A. I don't remember.

Q. Without giving the name, sir?

The Court: He says he doesn't remember.

A. I don't remember ever speaking to Mella Hort.

Q. Do you remember speaking to anybody in the Quartermaster Corps over the telephone before you left the employ of Bonita Originals in July, 1952, with reference to routine matters?

A. I would have no occasion to tell the Quartermaster Corps I wasn't an associate of Bonita, because they would have no knowledge that I was associated.

[fol. 380] Q. Well, sir, were you in the business plant or the office of Bonita Originals regularly during the months of June and July of 1952?

A. Not regularly. I used to come in once a week, more or less.

Q. Could it be more—

A. I wasn't—

Q. —than that?

A. I doubt it. Now remember, I was not employed by them. I am an independent accountant and came there on occasion.

Q. Now, sir, you testified this morning on direct examination that Mr. Rubin mentioned the name of Mella Hort to you.

A. At times to me.

Q. Well, was that before the contract was given or after the contract?

A. Before and after.

Q. In other words, if the contract was given on June, on June the 12th, is it your testimony that he mentioned her name to you before that date?

A. Yes.

Q. Do you recall testifying before the Senate approximately two years ago, in May of 1955?

[fol. 381] A. I recall.

Q. Was your memory good then?

A. Yes.

Q. Was it as good then as it is today?

A. Yes.

Q. May I call your attention—and I am reading from page 22 of the record—the following questions and answers:

Mr. Kennedy is speaking:

"He said he could obtain Government work, and did he say that he had the contact or knew the people and had the contacts in order to get Government work?"

And did you make the following answer:

"Yes, he did."

referring of course to Mr. Rubin.

A. You are reading, and I presume that is what I said at the time.

Q. Well, do you remember saying that, sir?

A. I don't remember that specifically.

Q. Although it is in the record of the Senate hearing?

A. I am not denying that I said it. I just don't remem-
[fol. 382] ber saying it.

Q. All right, sir. May I continue?

"Mr. Kennedy: And did you then bring Mr. Marvin Rubin to Mr. Ades and Mr. Levy and he then had a conference with those two individuals?"

And did you answer: "With myself present."?

A. If those are facts, I must have said that.

The Court: So far I don't see anything inconsistent.

Mr. Spar: I am leading to the question in one or two more, so that I don't take it out of context.

The Court: All right.

Q. "Mr. Kennedy: And you were present?"

And your answer: "Yes, sir."

Did you say that?

A. I was present at that meeting.

Q. Now by Mr. Kennedy:

"Did he explain that he could get Government work, and that he had the knowledge and the know-how, and had the contacts to get Government work?"

And did you answer: "He so stated"?

A. Yes.

Q. And was this question asked of you by Mr. Kennedy:
[fol. 383] "Did he at that time, that you can remember, did he mention any particular individuals that he knew through whom he would be able to secure these Government contracts?"

And did you answer, sir:

"If he mentioned names at that time, I wouldn't recall that he mentioned it at that time, because having heard the names for the first time, I don't think they would have stuck in my mind."

Did you make that statement, sir?
A. I made that statement at our—
Q. Did you, sir?

The Court: Go on.

A. (Continuing) —at our first meeting, which I said—the first meeting which I introduced the related parties.
Q. And that wasn't referring to any other meetings?
A. No.

By the Court:

Q. In other words, you are saying at the first meeting he did not mention the name; is that correct?
A. I say that they mentioned them. I wouldn't particularly remember the names.
[fol. 384] Q. Whether it was the first one?
A. As the result of that first meeting.
Q. But your statement today is that he did mention the name of Mella Hort before the award of the contract and after?
A. That's right.

By Mr. Spar:

Q. And you don't know the exact date of that, sir?
A. When he might have mentioned Mella Hort's name?
Q. Yes, sir.
A. I wouldn't know the exact date.
Q. How many meetings in all were you present with Mr. Ades and Mr. Rubin before any contract—and Mr. Levy before any contract was given?
A. I have stated about a half a dozen.
Q. And would you say that it was at that time?
A. It was during these dozen meetings that the names were mentioned.

Mr. Christy: Your Honor, may I direct counsel's attention to the bottom of page 23, and the top of page 24, in which I think Mr. Carlin explains his answer.
[fol. 385] Mr. Spar: If your Honor pleases, I think that is—

The Court: All right, you can take it up on redirect.

Q. Now, Mr. Witness, I ask you whether or not you made the following statement in response to the following questions—

Mr. Spar: And I am reading from pages 23 and 24, Mr. Christy.

Mr. Perrotta: Thank you.

Q. "Mr. Kennedy: Now, did he indicate to you and to Ades and Levy that there was no question but that he was going to get the contract that he bid on?"

And did you make the answer: "He made that very clear to us that he would get it."

A. I said that.

Q. "Did he indicate further that the reasons he was going to get these contracts was because of the contacts he had with ESTAPA?"

The Court: Did he answer?

Q. And your answer was: "Yes."

A. Well, I answered that question "Yes" at the time.

Q. Now I call to your attention, sir, that ESTAPA did [fol. 386] not come into existence until October 1, 1952, as conceded and agreed upon by all counsel in this case.

A. We are merely using the term "ASTAPA" to refer to 16th Street. The names were later used interchangeably. I didn't say it was ASTAPA. I used that term perhaps later.

Q. Well, isn't it a fact that there was no ASTAPA at all in April, May or June of 1952?

A. I do not know when ASTAPA came into existence.

Q. Now, may I continue, sir:

"Did he mention now during this period of time the people that he knew particularly well at ASTAPA?"

And did you answer, "There were two names that I recall that were mentioned many times, and so I have them fixed in mind."?

Did you say that, sir?

A. I said that I had them fixed in mind, yes.

Q. And that was referring to ASTAPA.

A. You dwell on that. A person can change his name. You merely call—you merely identify the new name of the previous body, that is all.

The Court: You say you meant 16th Street?

The Witness: I—at all times, when I used the word [fol. 387] "ASTAPA", "Government Procurement", anything, I am referring to one person known by other names, and that is the Procurement Office down at 16th Street, the Quartermaster Clothing Procurement. I really don't know which is the absolute proper name, but it has been referred—it has been referred to in many names, and at all times I meant the one organization.

By Mr. Spar:

Q. And that was the—

A. Procurement Division at 16th Street.

Q. And thus, all you know is that you used these names interchangeably and at will?

A. I used those terms to always indicate the Quartermaster Corps, with whom these contracts were let.

Q. Now, sir, on direct examination you referred to a deviation from a contract, and you referred to a shading; s-h-a-d-i-n-g?

A. Yes.

Q. Is that what you referred to?

A. Yes.

Q. May I call to your mind, sir, that isn't it a fact that Bonita Originals wrote a letter to the Government agency, [fol. 388] informing the Government that a certain machine had broken down that was used for shading and asked permission to use hand work for shading? Was that the deviation you are referring to?

A. I don't remember the exact circumstances, how the thing was negotiated. I only remember the desire to change from a prescribed method of marking to the absence of marking.

Q. You mean no marking at all?

A. That was the way—that was what we had hoped to accomplish.

Q. Well, isn't it a fact that all the Government reported back to Bonita Originals was that it was immaterial whether they used the machine or hand work for shading, but as long as it was shaded?

A. I do not know of such exchange of letters.
Q. Do you know whether they exist or not?
A. I do not know whether such letters exist.
Q. Do you know that they don't exist?
A. I do not know that they don't exist.
Q. You don't know anything about the question of shading then; is that right?
A. It is not right.
Q. The ultimate decision by the Government?
[fol. 389] A. That is not right, when you say I know nothing about it.
Q. Well, what was the ultimate decision, to your memory?
A. To my memory?
Q. Yes, sir.
A. To my memory, we were able to do these things without shading, as originally specified in the specifications.
Q. There was no hand work done at all?
A. I do not know to what extent they circumvented the original contract.

Mr. Spar: I ask that that be stricken from the record, if your Honor please, that expression.
The Court: The word what?
Mr. Spar: "Circumvent."
Mr. Christy: It was responsive to the question, your Honor.
The Court: Well, you don't know in which way—we prefer the word "deviate"—they deviated?
The Witness: I don't know how the ultimate deviation was accomplished.

Q. And you don't know whether or not permission was ever granted for it?
[fol. 390] A. It was my understanding that permission was granted for the deviation.
Q. And you don't know who gave the permission?
A. No, I don't.
Q. You don't know how high in the echelon of things in the Quartermaster Corps the deviation went before it was granted?

Mr. Christy: I object to that question, your Honor.
The Court: I will sustain it.

Mr. Spar: No further questions.

The Court: I want to dispose of this witness before lunch, if we can.

Mr. Carroll: No questions.

The Court: That is very helpful.

Mr. Christy: I have some very short ones.

Redirect examination.

By Mr. Christy:

Q. Mr. Carlin, I call your attention to Defendant's Exhibit A, to the notation that check 2213, the word "exchange" appears thereon, does it not?

A. It appears.

Q. Do you notice anything unusual about that word "exchange"?

Mr. Spar: I object to that, if your Honor please. I [fol. 391] don't know what that means, "unusual" with the word.

Mr. Sullivan: It speaks for itself, if the Court please.

The Court: Overruled.

A. The legend "exchange" has been—there has been an attempt to erase it. It is smudged.

Mr. Christy: Thank you.

Q. Now, Mr. Carlin, Mr. Spar asked you whether you had answered certain questions before the Senate Committee.

The Court: May I see that exhibit, please?

Proceed.

Mr. Christy: I am reading at the bottom of page 23.

Q. Do you remember this question, Mr. Carlin:

"Mr. Kennedy: Did he mention now during this period of time the people that he knew particularly well at ASTAPA?"

And do you remember giving this answer:

"Mr. Carlin: There were two names that I recall that were mentioned many times, and so I have them fixed in mind."

[fol. 392] Mr. Spar: I object to that. It has already been asked and answered.

The Court: He was asked that question on cross-examination.

Mr. Christy: I want to continue, your Honor.

Q. Do you remember that question and that answer?

A. Yes.

Q. And do you remember this question and this answer, Mr. Carlin:

"Mr. Kennedy: Would you give us those names.

"Mr. Carlin: There was a Major Farnell, I believe, the name Farnell, I think it was Major, and a woman, a Mrs. Hort."

A. Yes.

Q. Do you remember that question and that answer?

A. I do.

Mr. Christy: No further questions, your Honor.

Mr. Sullivan: If the Court pleases, I would like to ask that the Government produce the check stub for the second $1,000-check, which I haven't seen.

The Court: Why didn't you ask him privately for it? [fol. 393] What is the problem?

Mr. Christy: If we have it, your Honor, we are perfectly willing to give it to him.

The Court: They have given you everything at my direction, and I am sure they will give it to you.

Mr. Sullivan: If your Honor pleases, last Friday I did ask the Government to—

The Court: Please, please. I don't want this in front of the jury. They have made all the books available that I have instructed them to make available. They have made every single record that I have instructed them to make available to you, and I will instruct them that if this is available, to make this available. We need not have any more discussion. This will be made available to you, if they have it.

Is there any further cross of this witness?

Mr. Spar: No, sir.

The Court: Thank you, Mr. Carlin.

(Witness excused.)

The Court: Ladies and gentlemen, we will recess until 2.15 for lunch.

(Recess to 2.15 p.m.)

[fol. 394] Afternoon Session—2.15 p.m.

(The following took place in the absence of the jury:)

Mr. Sullivan: If the Court please, may I address you?

If your Honor please, according to the case of Gordon v. United States, 344 U.S. 414, it was my understanding having to do with the prior statement that I asked to be furnished to me, that was given to Balaban and Poole, it was my understanding that if I can tell your Honor of a specific statement, that then the rule is that you see the statement and observe if there is any inconsistency, and if there is, you give it to me; am I mistaken in that?

The Court: That is substantially correct.

Mr. Sullivan: Well, I did ask for the specific statement given to Balaban and Poole.

The Court: I know, but you didn't point out that there was any inconsistency. That is the obligation.

Mr. Sullivan: I don't have to, as I understand it.

[fol. 395] The Court: Oh, yes, you do. You must at least indicate to me something that makes it appear that there might have been something inconsistent in that statement. Then I would read it over. But there wasn't the slightest indication. As matter of fact, everything you brought out indicated that it was consistent. The mere request doesn't make it necessary for me to look at it. Otherwise the Court would be busy all day long looking at every possible document that had anticipated the case. You may show something inconsistent, because that is the only purpose upon which you could use it, or at least something that tends to make us believe that there was something inconsistent, and then the Court has an obligation to look at it.

I am familiar with the entire line of cases.

(Jury in box.)

Mr. Christy: The Government calls Leon Levy.

* * * * * * *

[fo. 396]

EXHIBIT "A"

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—v.—

HARRY LEV, et al.,

Appellants.

Affidavit

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK, ss.:

ARTHUR H. CHRISTY, being duly sworn, deposes and says:

1. He is Chief Assistant United States Attorney for the Southern District of New York and, as such, is fully familiar with all the proceedings heretofore had in the above-captioned matter.

2. He was the prosecutor at the trial of *United States* v. *Lev, et al.*, in March and April, 1957.

3. During the course of the trial, a demand was made for a statement allegedly signed by Government witness Melvin Carlin and given to investigators of the Senate Permanent Subcommittee on Investigations, Jack S. Balaban and L. L. Poole. At the time such demand was made, your deponent did not have in his possession any signed statement by the Government witness Carlin, nor any report of an interview of Carlin by Senate investigators; nor was your deponent aware that there was in existence either a signed statement or a report of an interview.

4. Following the decision in *Jencks* v. *United States*, 353 U.S. 657, decided in June 1957, your deponent communicated with the Senate Permanent Subcommittee on Investigations to determine if the Subcommittee had in its

[fol. 397] possession a statement signed by Carlin or a report of an interview with Carlin.

5. Your deponent was advised that a search was made through the files of the Senate Permanent Subcommittee on Investigations and that no statement signed by Carlin was located.

6. Your deponent was advised that Senate investigators Jack S. Balaban and L. L. Poole had interviewed Carlin on one occasion and had prepared a memorandum for Chief Counsel Robert F. Kennedy which contained a report of their interview with Carlin. The Senate Permanent Subcommittee on Investigations advised your deponent by letter that no signed statement by Carlin could be found, and such letter is attached to and made a part of this affidavit.

7. The Senate Permanent Subcommittee on Investigations, at your deponent's request, forwarded a copy of the memorandum prepared by Jack S. Balaban and L. L. Poole. This memorandum, containing a report of an interview with Carlin, was prepared on March 17, 1955, by Jack S. Balaban and L. L. Poole. A copy of the memorandum furnished by the Senate Permanent Subcommittee on Investigations has been signed and dated by Jack S. Balaban and it is contained in a sealed envelope attached hereto and made a part of this affidavit. It may, of course, be opened by the Court for inspection.

8. Investigator, Jack S. Balaban, who interviewed Carlin has signed an affidavit stating that, to his knowledge, no signed statement was ever taken from Carlin and that the memorandum prepared by him following his interview with Carlin is the only one in the files of the Senate Permanent Subcommittee on Investigations relating to an interview with Carlin. Balaban's affidavit is attached hereto.

/s/ Arthur H. Christy

Sworn to before me this
4th day of April, 1958.

/s/ Jack W. Ballen
Notary Public, State of New York
No. 41-0146400, Queens County
Term Expires March 30, 1959

[fol. 398]

EXHIBIT "B"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—v.—

HARRY LEV, et al.,

Appellants.

Affidavit

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK, *ss.*:

JACK S. BALABAN, being duly sworn, deposes and says:

1. He is an investigator employed by the Office of Comptroller General of the United States and assigned to the Senate Permanent Subcommittee on Investigations of the United States Senate Committee on Government Operations, He has been so employed since 1935.

2. In his position as investigator, he was assigned to work on the investigation by the Subcommittee into the fraudulent practices in textile procurement in the military services, which investigation culminated in Hearings before the Subcommittee in 1955.

3. In the course of his work on the investigation into the procurement of certain garrison cap contracts awarded to Bonita Originals, Inc. in June, 1952, he had occasion to interview Melvin Carlin, a certified public accountant at 11 West 42nd Street, New York, New York. Carlin was an accountant for Bonita Originals, Inc. With him at this interview was another investigator of the Subcommittee, L. L. Poole.

[fol. 399] 4. Your deponent and L. L. Poole interviewed Carlin, whom your deponent is advised was a Government

witness in the case of *United States* v. *Lev, et al.*, tried in the Southern District of New York in March and April, 1957, in Carlin's office in March of 1955.

5. This was the only interview your deponent recalls having with Melvin Carlin and, upon information and belief, it is the only interview investigator L. L. Poole had with Carlin.

6. At no time did your deponent obtain from Carlin a signed statement and, upon information and belief, at no time did L. L. Poole obtain a signed statement from Carlin.

7. L. L. Poole resigned as an investigator for the Senate Subcommittee in 1958 and his whereabouts are presently unknown to your deponent.

8. Following the interview with Carlin in March, 1955, your deponent prepared for Robert F. Kennedy, Chief Counsel of the Subcommittee, a memorandum of the interview with Carlin. In this memorandum your deponent summarized generally what Carlin had related to your deponent and L. L. Poole. This memorandum was not adopted nor approved by Carlin, nor is it a substantially verbatim recital of an oral statement made by Carlin.

9. This memorandum was prepared on March 17, 1955, and is the only memorandum prepared by your deponent in connection with the interview by your deponent and L. L. Poole with Carlin and is the only memorandum your deponent knows of in the files of the Subcommittee.

10. On this day, your deponent was shown a copy of the memorandum he and L. L. Poole prepared following the interview with Carlin. Your deponent has signed his name and the date on each of the three pages of this memorandum.

/s/ JACK S. BALABAN
JACK S. BALABAN

Sworn to before me this
4th day of April, 1958

/s/ JACK W. BALLEN
Notary Public, State of New York
No. 41-0146400, Queens County
Term Expires March 30, 1959

[fol. 400]

EXHIBIT "C"

(Letterhead of United States Senate, Committee on Government Operations Senate Permanent Subcommittee on Investigations.)

(Stamp)

U.S. ATTORNEY
Mr. Christy
1958 MAR 27 PM 4:22
9357
S.D.N.Y.

March 25, 1958

Mr. Arthur H. Christy
Chief of the Criminal Division
Southern District of New York
U. S. Court House
Foley Square
New York, New York

Dear Mr. Christy:

A check has been made of all references in the possession of this Subcommittee concerning Melvin Carlin and no record has been found of any interrogatory or interview other than that of Jack Balaban. I trust that this is the information you desire.

Very truly yours,

/s/ DONALD O'DONNELL
Donald F. O'Donnell
Acting Chief Counsel

[fol. 401]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 283—October Term, 1957.
(Argued April 29, 1958.)
Docket No. 24809

UNITED STATES OF AMERICA, Appellee,

—v.—

HARRY LEV, MARVIN RUBIN, MAURICE ADES and RAYMOND WOOL, Defendants-Appellants.

OPINION—August 11, 1958

Before: Clark, Chief Judge, and Hincks and Stewart, Circuit Judges.

Appeal from the United States District Court for the Southern District of New York, Irving R. Kaufman, *Judge*.

Harry Lev, Marvin Rubin, Maurice Ades, and Raymond Wool appeal from their convictions of conspiracy to defraud the United States, 18 U. S. C. §371, and Rubin also appeals from his conviction of bribery, 18 U. S. C. §201. Affirmed.

[fol. 402] Arthur H. Christy, Chief Asst. U. S. Atty., S. D. N. Y., New York City (Paul W. Williams, U. S. Atty., and Fioravante G. Perrotta and Joseph T. Altier, Asst. U. S. Attys., New York City, on the brief), for appellee.

Milton S. Gould, of Gallop, Climenko & Gould, New York City (George Trosk, of Gallop, Climenko & Gould, New York City, on the brief), for defendant-appellant Harry Lev.

John T. Sullivan, New York City, for defendant-appellant Marvin Rubin.

Thomas J. Short, of Dougherty, Ryan & Mahoney, New York City, for defendant-appellant Maurice Ades.

Albert H. Treiman, New York City, for defendant-appellant Raymond Wool.

CLARK, Chief Judge:

Harry Lev, Marvin Rubin, Maurice Ades, and Raymond Wool appeal from a verdict and judgment of conviction for conspiracy to defraud the Government in violation of 18 U. S. C. §371. Rubin also appeals from a conviction for bribery in violation of 18 U. S. C. §201. The defendants were indicted for a single conspiracy to defraud the United States in the administration and procurement of Government contracts. Alleged errors involve principally a claimed variance between a charge of a single conspiracy and proof of two, and a failure to order a statement from a Government witness delivered to the defense for use in cross-examination. Ades and Wool also claim an insuffi- [fol. 403] ciency of the evidence, as does Rubin with respect to the bribery charge.

The proof adduced at the trial below tended to show overt acts between February 1952 and about August 1953 involving the procurement and administration of two contracts awarded to Bonita Originals, Inc., for the manufacture of Army garrison caps, and overt acts in the period commencing in April 1953 and continuing on into 1954 involving the procurement and administration of a contract awarded to Spencer Manufacturing Corporation for the manufacture of white hats for the Navy. During the former period Ades was the president and owner of 50 per cent of the stock of Bonita, Rubin was employed by Bonita on a profit-sharing basis to deal with Government officials on the garrison cap transaction, and Wool, an Army officer in the Quartermaster Corps, was assigned the Bonita contracts for administration until they were completed. Lev was not involved in either the procurement or the administration

of the Bonita contracts. But Lev, Ades, and Rubin were all interested in Spencer Manufacturing Corporation and involved in the procurement and administration of the white hat contract. Wool was appointed a Contracting Officer of the Armed Services Textile and Apparel Procurement Agency (ASTAPA) prior to the award of the white hat contract and participated in both the award and the administration of that contract. On this proof Judge Kaufman, for the defendants' benefit, charged the jury that in fact two separate conspiracies were involved—the Bonita conspiracy and the white hat conspiracy—although he expressed doubts as to whether it was improper to characterize the conspiracy as a single one.

Defendants urge that a fatal variance occurred between the indictment and the proof concerning the number of conspiracies, and that this error was compounded by confusion on this point in the court's charge to the jury. A claim of [fol. 404] variance is not unusual in a conspiracy case. *United States* v. *Rosenberg*, 2 Cir., 150 F. 2d 788, 793, certiorari denied 326 U. S. 752, and the courts have not evolved clear lines for distinguishing single and multiple conspiracy situations. Cf. *Blumenthal* v. *United States*, 332 U. S. 539; *Berger* v. *United States*, 295 U. S. 78; *Kotteakos* v. *United States*, 328 U. S. 750; *United States* v. *Cohen*, 2 Cir., 145 F. 2d 82, certiorari denied *Cohen* v. *United States*, 323 U. S. 799; *Monroe* v. *United States*, D. C. Cir., 234 F. 2d 49, certiorari denied 352 U. S. 873; *Canella* v. *United States*, 9 Cir., 157 F. 2d 470. Here, although from Lev's vantage point the Bonita transaction was completely separate from the white hat transaction, from the viewpoint of the other appellants the conspiracy was a single one to defraud the Government in matters of war contracts. Thus as to Rubin, Ades, and Wool, who were involved in both transactions, there is, properly speaking, no variance. See *Canella* v. *United States, supra*, 9 Cir., 157 F. 2d 479; *cf. Blumenthal* v. *United States, supra*, 332 U. S. 539.

As Lev was involved only in the latter transaction, a more serious question of variance does arise as to him. In *Berger* v. *United States, supra*, 295 U. S. 78, 82, and *Kotteakos* v. *United States, supra*, 328 U. S. 750, 757, the Supreme Court set out the applicable rule in these circum-

stances: "The true inquiry, therefore, is not whether there has been a variance in proof, but whether there has been such a variance as to 'effect the substantial rights' of the accused." In this Circuit the test applied has been stated as whether the conspiracies ultimately proved might have been joined in a single indictment and whether the trial was conducted so as to protect the rights of defendants who are not common to all conspiracies. *United States* v. *Cohen, supra,* 2 Cir., 145 F. 2d 82, 89. Although Lev claims that the confusion inherent in the indictment was compounded by the court's instructions, a thorough reading of the charge shows [fol. 405] that Judge Kaufman was scrupulous in protecting Lev's rights. In fact it is apparent that the jury was able to differentiate between the evidence relevant to defendants involved in only one of the conspiracies, for it acquitted defendant Pollock, who was alleged to be involved solely in the Bonita affair. It follows that the variance here was not prejudicial and was at most harmless error.

Ades and Wool claim that the evidence linking them to the conspiracy was insufficient to justify admitting in evidence against them the admissions of other conspirators. Two witnesses for the prosecution gave important evidence involving particularly statements by Rubin defining and particularizing the use of funds to pay for entertainment of and gifts to the Government inspectors. These were Carlin, accountant for Bonita, and Levy, secretary-treasurer and co-owner of Bonita. Levy's testimony particularly went into details of funds drawn by him for uses which Rubin's directions and explanations to him showed were improper, definitely bringing the others, notably Ades and Wool, into the conspiracy. Hence we must consider the independent evidence supporting the inference of participation in the conspiracy and justifying the receipt of this testimony against them.

The independent evidence linking Ades to the illegal plot shows that he was present at a meeting with Rubin in the spring of 1952 where Rubin allegedly stated that he would need 5 to 7 per cent of the contract price in order to entertain Government personnel. Ades then went to Puerto Rico, where he managed the factory which manufactured the caps and hats supplied the Government. There is testi-

mony that, while running the plant in Puerto Rico, he induced a Government inspector, Ienni, to live at his apartment rent free; that he brought another Government employee named Schlesinger to Puerto Rico secretly under an alias; that he attempted to bribe another inspector, Wat- [fol. 406] kins; that he wrote a letter attempting to have Forcillo, a Government inspector, removed because he was too tough; and that, even before the white hat contract was awarded, he was bragging that they would receive it.

As to Captain Wool, the proof was that he went to visit Rubin's office several times; that as the officer supervising the procurement he granted valuable contractual deviations whenever they were requested, both in the Bonita contract and later to Lev; that he had several meetings with Lev before the opening of the bid on the white hat contract; and that as contracting officer he approved Lev's bid, although the pre-award survey showed that Lev had no machinery at all in Puerto Rico to manufacture the hats. There was testimony that in May or June 1953 Wool came to the Bonita office and took a topcoat and again, some children's dresses. There was further evidence from Rubin's doctor, Dr. Franklin, who testified that Rubin introduced Wool to him and that he treated Wool on nine separate office visits and rendered a bill for $265, which was paid by a check from the Bonita Corporation for $285 (thus including $20 for Rubin himself). Later when Rubin came to testify he said that Wool's affliction was deep-seated and of long standing, which no Army doctor had been able to reach, but which Dr. Franklin proceeded to cure by this course of treatment. This evidence stands uncontradicted on the record, and Wool (who did not testify) offered no satisfactory explanation of Bonita's making this payment for him. There was also considerable circumstantial evidence tending to show, when coupled with testimony as to statements made by an alleged coconspirator, that a month after the white hat contract was awarded Lev advanced him $5,000, which he used to complete payments on the purchase of a house. Later in testifying to a Senate committee investigating these frauds he claimed to have borrowed money and given a note to one Luciano, who denied this in testifying below. This [fol. 407] testimony was presented by the Government to

show consciousness of guilt. Thus the evidence offered as to both Ades and Wool presents amply sufficient groundwork for the admission of testimony of statements by coconspirators and in particular for Levy's terribly devastating testimony, which, when believed by the jury, left no question of guilt.

Defendants Lev and Rubin assert that the trial court committed reversible error in refusing to order the Government to produce for their inspection a statement made by Government witness Carlin to agents of a Senate investigating committee. Since the decision in *Jencks* v. *United States*, 353 U. S. 657, we know that the trial judge was in error in refusing the order on the ground that the defendants had not established inconsistencies between the statement and the witness' testimony. But before a new trial is to be ordered, we must see if the statement is in any event discoverable. Although the statement is not a part of the lower court record, the prosecutor—who did not have it at the trial—has procured from the Senate committee and presented to us in a sealed envelope a verified copy of a Senate investigator's summary of an interview with Carlin. An additional affidavit establishes that this summary is the only written record made of Carlin's interview, and that it was written following the interview and is not a substantially verbatim record of Carlin's statement. We have examined the summary, and internal evidence from it tends also to bear this out.

While defendants may perhaps have been given a right to inspect a statement of this nature by the *Jencks* decision, *supra*, 353 U. S. 657, 668,[1] the recent codification of dis- [fol. 408] covery in this situation allows a defendant to examine only the following:

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[1] Here the Court said: "We now hold that the petitioner was entitled to an order directing the Government to produce for inspection all reports of Matusow and Ford in its possession, written and, when orally made, as recorded by the F. B. I., touching the events and activities as to which they testified at the trial." While not specified, it seems inferable that the F. B. I. recording of the reports made orally was contemporaneous with the making of the oral statements.

"(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

"(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement." 18 U. S. C. §3500(e)(1)(2).

As this statute will apply on a new trial of any of these defendants, and as under it discovery of the summary cannot be required, the trial court's error is rendered harmless, *United States v. Miller*, 2 Cir., 248 F. 2d 163, certiorari denied *Miller* v. *United States*, 355 U. S. 905.

There remains to be discussed Rubin's contention that there was insufficient evidence for the jury to have convicted him of bribery. We think the evidence quite sufficient. There was proof that Chief Inspector Porreca, whose duty it was to assign inspectors, upon a request had removed Forcillo from Puerto Rico and replaced him with a more lenient man. Thereafter Rubin sent Porreca a deep freeze, for which Bonita paid. Porreca later received some meat to put in the freezer. He testified that he never paid for any of this, nor was he ever asked to pay for it. This was enough evidence of violation of the bribery statute, 18 U. S. C. §201. The defense efforts to show that nothing Porreca did actually defrauded the Government are irrelevant as the statute shows.

This important trial discloses a sad and sordid picture of Government agents yielding to rather cheap temptation, [fol. 409] some willingly, some only under pressure. But there is another side to the story, of inspectors who stood out at all times against such debauchery of their obligations and who were transferred to other activities for their pains. It is to be hoped that they received no permanent setbacks in their careers, but eventually were accorded that proper respect which they so richly merited.

Convictions affirmed.

[fol. 410]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

HENRY LEV, MARVIN RUBIN, MAURICE ADES and RAYMOND WOOL, Defendants-Appellants,

JOSEPH G. PORRECA, ERIC C. FARNELL, MELLA HORT, DAVID POLLACK and GEORGE A. EARNSHAW, Defendants.

JUDGMENT—August 11, 1958

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they hereby are affirmed.

A. Daniel Fusaro, Clerk.

[File endorsement omitted]

[fol. 411] Clerk's Certificate (omitted in printing).

[fol. 412]

SUPREME COURT OF THE UNITED STATES

No. 435, October Term, 1958.

HARRY LEV, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—September 9, 1958

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 10, 1958.

/s/ JOHN M. HARLAN
Associate Justice of the Supreme
Court of the United States.

Dated this 9th day of
September, 1958.

[fol. 413]

SUPREME COURT OF THE UNITED STATES

No. 436, October Term, 1958.

RAYMOND WOOL, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—September 9, 1958

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 10, 1958.

/s/ JOHN M. HARLAN
Associate Justice of the Supreme Court of the United States.

Dated this 9th day of September, 1958.

[fol. 414]

SUPREME COURT OF THE UNITED STATES

No. 437, October Term, 1958.

MARVIN RUBIN, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—September 9, 1958

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 10, 1958.

/s/ JOHN M. HARLAN
Associate Justice of the Supreme Court of the United States.

Dated this 9th day of September, 1958.

[fol. 415]

SUPREME COURT OF THE UNITED STATES

No. 435, October Term, 1958.

HARRY LEV, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI. December 8, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted limited to questions 5, 6, and 7 presented by the petition for the writ which read as follows:

"5. Is it proper for a reviewing court to make an examination in camera of a sealed summary of a witness's prior statement to a government investigator furnished it by the prosecutor and of ex parte affidavits pertaining to the summary in order to determine whether the summary is discoverable under the provisions of Title 18 U. S. C., Section 3500, when no claim is made that it contained irrelevant or extraneous matter?

"6. Are not summaries and reports of prior statements made by witnesses to a government investigator available to the defendant under the provisions of Title 18 U. S. C., Section 3500?

"7. Does Title 18 U. S. C. Section 3500 provide the sole procedure by which such summaries and reports are to be made available to defendants?"

The case is consolidated with Nos. 436 and 437 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter and Mr. Justice Stewart took no part in the consideration or decision of this application.

[fol. 416]

SUPREME COURT OF THE UNITED STATES

No. 436, October Term, 1958.

RAYMOND WOOL, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI. December 8, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted limited to question 2 presented by the petition for the writ which reads as follows:

"2. Whether the rights of the petitioner were substantially prejudiced when the trial court denied the motion of the defendants to direct the Government to produce a statement which a witness for the Government had previously given to government agents, in direct violation of this Court's decision in Jencks v. U. S., 353 U. S. 657."

The case is consolidated with Nos. 435 and 437 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter and Mr. Justice Stewart took no part in the consideration or decision of this application.

[fol. 417]

SUPREME COURT OF THE UNITED STATES

No. 437, October Term, 1958.

MARVIN RUBIN, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI. December 8, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with Nos. 435 and 436 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter and Mr. Justice Stewart took no part in the consideration or decision of this application.